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## **Joint Comments from MCCV & CLFP Employer-Based Trip Reduction Rule (9410)**

*July 21, 2009*

The California League of Food Processors (CLFP) and the Manufacturers Council of the Central Valley (MCCV) are trade associations whose members have facilities (and worksites) within the San Joaquin Valley. Members of both organizations are primarily involved in food and beverage processing, and also include packaging and container manufacturers, fabricators, power generators and other related businesses and industries. We work in concert on a multitude of issues and have teamed up to prepare a joint response to the San Joaquin Valley Air Pollution Control District's proposed Employer-Based Trip Reduction Rule, Rule 9410.

We have reviewed the Draft Proposed Rule and attended the workshops. The rule, as currently drafted, presents a number of challenges which effectively render it unworkable for our member facilities. Furthermore, it is questionable whether any actual emission reductions will be realized; the implementation costs are significant; and fundamentally, this is an attempt at social engineering, which places the burden for mobile source reductions upon the backs of employers.

The district has a reputation for promulgating rules which are based on quantifiable reductions and definable control measures and parameters: rules which actually produce the vital emission reductions this valley needs. In contrast, the proposed employer-based trip reduction rule really is little more than a "feel good" rule, which does nothing to get at the core issue of mobile source emission reductions. For all of the above reasons, we cannot support this rule and would ask that it be withdrawn.

Our specific concerns are detailed below and we would be interested in meeting with you to discuss this issue and our objections in more detail.

### **ONCE AGAIN SHIFTS COMPLIANCE BURDEN (COSTS) TO STATIONARY SOURCES**

As stated above, fundamentally we are opposed to this rule, as it once again shifts the burden for air quality improvements to stationary sources when the data clearly indicates that 80 percent of the pollution originates from mobile sources, and of this, only 17 percent is due to travel to and from work, leaving 83 percent of the mobile source reductions unaffected. Further, we would submit that even this 17 percent figure is misleading, in relation to any attempt to quantify benefit, because in many portions of the valley, the commute is to worksites outside of the air district. This can be substantiated through commuter surveys conducted by many of the valley transportation planning agencies (Councils of Governments or COGs) as part of their congestion management relief work. The Rule will impose significant costs to develop, implement, and monitor programs and to report

data to the Air District. Many Valley businesses are already subject to a litany of stationary source rules and other Air District requirements, and this rule would render the Valley an even less attractive place to conduct business and this impacts not just the valley, but the entire state.

London-based Economist magazine recently printed a cover story titled "America's Future" which compared California and Texas: and Texas is winning. In a 10-page special report on Texas, "Lone Star Rising", The Economist goes on to say that "*High taxes, coupled with intrusive regulation of business and greenery taken to silly extremes, have gradually strangled what was once America's most dynamic state economy. Chief Executive Magazine, to take one example, has ranked California the very worst state to do business in for each of the past four years.*"

The costs to comply with this rule are difficult to ascertain, but our members estimate that at minimum, just to set up, survey and distribute information, it will cost around \$20,000 per worksite. This does not include the costs to develop and implement the ETRIP measures, including incentives, which could add another \$50,000 to \$500,000 per worksite annually for mid to large size firms.

**POTENTIALLY MINIMAL AIR QUALITY BENEFIT:**

Additionally, there is no quantification of the emission reductions which will be achieved and our very rough calculations indicate that there will be minimal benefit to air quality, yet there will definitely be increased costs associated with compliance. One company estimated that if they were to have a 20 percent carpool participation from their workforce of 450 (of which only about half qualify as "eligible"), it would amount to a reduction of .0024 tons per day of NOx and .00097 tons per day of VOC emissions. The 20 percent participation is extremely high as another food processing firm that initiated a carpool/ride share program has seen only a two percent participation rate, despite extensive promotions and incentives.

At a savings of 0.0024 tons per day of NOx per facility, it would take a total of 415 other similar manufacturing sites to yield a total NOx reduction of 1 ton per day. If, for example, it cost at least \$50,000 per site to establish, promote, and fully implement the program, the total annual cost for 416 manufacturing sites would be at least \$21 million, and realistically, considerably more. Based on these assumptions, including a very generous 20% employee participation rate, this could be one of the least cost-effective rules that the District has ever considered.

The district's own information demonstrates that even as vehicle-miles traveled have increased, the overall emissions have decreased due to cleaner burning vehicles, and this reduction is expected to continue in the coming years as new mobile source and fuel standards are implemented. It will be extremely difficult, if not impossible, to determine the cost-effectiveness of this rule and the associated socio-economic impacts: This alone, should cause the district to consider a different approach. If the District and stakeholders cannot be reasonably sure that the Rule will deliver cost-effective emissions reductions, then why proceed with these burdensome requirements?

**VMT INCREASE DUE TO RESIDENTIAL DEVELOPMENT PATTERNS NOT FACILITY SITING**

The reason that the average commute distance to work has increased, and the vehicle occupancy rate has decreased, over the last 20 years is generally *not* because businesses have been moving their factories; many manufacturing facilities in Fresno, Modesto, and other places have been in the same location for many years. As an example, the Wawona Foods facility was on the outskirts of Fresno 25 years ago. Due to rapid urban sprawl that same facility is now surrounded by miles of new housing developments that stretch almost to the foothills. Additionally, as referenced above, during

the housing boom of the 1980's and 1990's many from the Bay Area relocated to the valley—relocated residency NOT relocated employment. VMT has increased because of poor regional planning that has permitted residential sprawl across the Valley without sufficient investment in mass transit, livable communities and other “smart” growth strategies. This burden should not be borne by stationary sources.

### **SOCIAL ENGINEERING**

Although well-intentioned, it concerns us that this rule is, in essence, social engineering. It is an experiment in changing the driving, shopping, and work habits of valley residents and mandates that employers be the agents of this change. At the end of the day, our member-facilities may expend millions of dollars collectively to implement plans and establish programs which effect no change in behavior and as a result, generate negligible emission reductions.

A July 7, 2009 article in *The Hill* discussed a recent program enacted by the United States House of Representatives, *“The Chief Administrative Office (CAO) spent \$23,000 to lease and maintain 30 bicycles beginning last July. Eight months later, the bikes had been used by less than 3 percent of the House’s staff. The 175 people signed up for the program have used the bikes a total of 300 times. That means some people have likely used the program only once, and each bike has been ridden about 10 times.”*

Ride-share programs established at some of our member worksites indicate similar participation; less than two percent at one site, despite intense promotion and assistance.

### **RULE IS UNWORKABLE FOR FOOD PROCESSING AND MANUFACTURING ENVIROMENTS**

#### **1. OFFICE-CENTRIC FOCUS: DOESN'T MESH WITH PRODUCTION ENVIRONMENT**

The proposed rule and the various compliance measures are office-centric. That is, they are designed to work in an urban office environment, as an example, the Air District offices in Fresno. This is an entirely different work environment from that of our member companies. Options such as telecommuting, bikes, and guaranteed rides home may be feasible for employers located near urban areas with a largely white-collar staff who are all essentially working a single shift. It is difficult to translate the measures across platforms to a manufacturing environment with multiple shifts, and even multiple production lines with varied reporting times depending upon processing schedule. Working four 10-hours days per week may be a good option in an office setting, but it is far less desirable if the job entails hard physical labor in a manufacturing plant. Accordingly, most of the measures are infeasible for food processing and manufacturing production environments.

- a. **MULTIPLE CLASSIFICATIONS/WORK ENVIRONMENTS:** The way the rule is currently written it requires implementation to all eligible employees with no distinction for classification, union, work environment, etc. Union contract requirements regarding duty hours, overtime, financial incentives, and other issues will greatly complicate efforts by employers to implement the Rule. An example: the Rule states that if an employer offers the option of a compressed work week “All eligible employees must be on the compressed work week schedule.” (Section 3.2.10). Does the district have the legal authority to issue this mandate and does this authority supersede that of contracts, union bargaining agreements and state and federal wage orders?

- b. NO PROVISION OR EXCLUSION FOR INDUSTRY EMERGENCY RESPONSE TEAM: Many facilities designate employees as Emergency (or Safety) Response Team members (either for food safety or industrial worker safety incidents) to meet various regulatory requirements. These employees are designated as on-site first responders to incidents, though they may be on call. They do not have an assigned “emergency response vehicle” but are precluded from participating in car pools or utilizing public transportation due to the unforeseen aspects of their jobs. The rule includes no provision or eligibility exclusion for this category of employee.
- c. MASS TRANSIT UNAVAILABLE: At many locations in the San Joaquin Valley frequent and reliable mass transit systems either don’t exist, or they are so limited in scope that they are of no practical use to most employees. Again, the service is designed more for a Monday to Friday, 8 to 5 workweek, and not a 24/7 schedule. Even if the employer gives out subsidized bus passes to workers, most people won’t ride the bus if it takes too long to get to their job. It would be interesting to see how long it would take a sample of workers to travel by bus from their homes to their work sites in several areas around the District. In Stanislaus County, it can take up to an hour to get from Patterson to Modesto, and the service is available only from about 5:30 a.m. to 8 p.m. weekdays and drops off downtown, several miles from major employers, not near the majority of major manufacturing employers. The Saturday schedule is far more limited and there is no Sunday service.
- d. BIKING TO WORK INFEASIBLE FOR MANY PRODUCTION WORKERS: If OSHA and the Air Districts are constantly warning workers to stay cool on hot days when the risk of heat stress is high and the air quality is poor, why would an employer urge their workers to ride a bike to work on a days like the valley typically experiences many times each summer and risk heat stroke, and undue exposure to less healthy air? Further, bike lanes are few and far between in most Valley cities. How safe is it to have factory employees hit the streets on their bikes at 4 p.m. after 8 hours of working at a job that requires physical labor, or at 2 a.m. after their line is de-crewed and they are sent home. A bike ride home following a day at one’s desk in an air-conditioned office answering phones and working on the computer is a different scenario than that of a plant worker who has just completed a physically demanding shift at a manufacturing facility.
- e. ADDITIONAL CHALLENGES ENCOUNTERED WITH RIDESHARING/CARPOOLING: The district has acknowledged that there are difficulties associated with implementing ridesharing and carpooling programs. These are only exacerbated at in a production environment where there is less rigidity in work schedules. This ranges from arriving to work as part of a carpool to find your line has been “de-crewed” but will be up again in three hours to trying to figure out what to do when the driver of your carpool is on a crew that will work overtime to finish a production order. The situation for hourly workers is not quite the same as it may be for exempt employees. The best efforts of a company to establish a rideshare program may very well bump up against the realities of the workplace.
- f. NO-EXCUSE LATE POLICY: Many large food processing and manufacturing companies have a no-excuse policy for late arrival. This means that regardless of the reason, if

an employee is late for work more than a specified number of times they are terminated. This motivates employees to be responsible and to be sure their personal vehicle, or mode of transportation is operational reliable and that they allow adequate time for unexpected occurrences. Employees who participate in rideshare/vanpools/public transportation have less control of the situation and may arrive late for work, because the car was not serviced properly, the driver slept in, etc.

## **2. SEASONAL DEFINITION AND APPLICATION**

There are particular difficulties with implementation of this rule to operations which ramp up for a relative short period of time—120 days or less—and then drop back down for the remaining two thirds of the year.

- a. **INCONSISTENCY:** The definitions of a seasonal worker and seasonal employer should be amended to be consistent with other district rules used to define seasonal sources, such as Rule 2201 which utilizes a 120-day time period. Can the District really argue that someone who works for 100 days per year at a fruit cannery is *not* a seasonal worker, but if they work for 80 days at an amusement park located down the street they *are* a seasonal worker?
- b. **APPLICABLE OR EXEMPT?** Due to the seasonal nature of many of our member facilities, there are particular difficulties related to determining if and when they are subject to the rule, and if so for how long. Do they become subject to the rule during peak employment when more than 100 employees report in between 6 and 10 a.m., and then are no longer subject to the rule when the employment returns to its non-peak level of less than 100 for the remaining two-thirds of the year? Overlaying the applicability provisions (Section 2) further muddies the water. Are these calculations per worksite or per employer? The interplay between Section 2: Applicability and Section 3: Definitions (seasonal employee and seasonal employer) will lead to erroneous interpretation and application.
- c. **SEMI-ANNUAL SURVEY:** This is an especially burdensome requirement, even for year-round operations as an annual survey should be sufficient. The requirement becomes even more troublesome for seasonal employers who may be subject to the rule part of the year (see above) yet exempt the remainder of the year. If an employer is only subject to the rule for 90 days, how can they be required to conduct a second survey at least 120 days from the date of the first survey when they are no longer required to comply (and the workers who participated the first survey are no longer on the payroll)?

## **3. CONSEQUENCES OF FAILURE TO COMPLY ARE UNCLEAR**

The penalties for non-compliance are unclear in the current draft of the rule. Does this carry the same weight as other command and control regulations where emission reductions are quantifiable? This is especially concerning for our member facilities that have various permits with the district and are under various regulations, such as Title V. With the ambiguities and implementation difficulties associated with this rule, particularly in non-office environments, our members are concerned that a misinterpretation may result in

penalties that jeopardize the status of their permitted facilities and equipment.

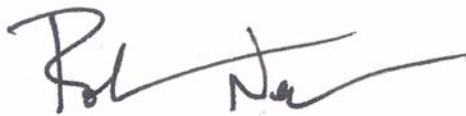
**4. POISON PILL**

The rule's poison pill is embedded in the Employer Trip Reduction Plan. The district maintains that employers can select the options that work best for their facility and worksite and that this is a very flexible and low or no cost program to implement, yet how can this be when the regulation mandates the use of costly incentives in order to amass enough points to meet the compliance minimum? It will be virtually impossible for our member companies to amass enough points, without incurring legal liability and union and contract violations, particularly in three sections: Implementation, Incentives, and Services and Amenities. And, the costs to implement the mandated programs are quite expensive, not low or no cost as stated at the workshop and inferred in the staff report. Further compounding the situation is another of the implementation difficulties: even though only a fraction of the workforce at a site may be considered "eligible" in that they report to work between 6 and 10 a.m., etc, for wage and benefit equity, the incentive programs have to be implemented across the entire workforce. This will add considerably to the cost and administrative burden.

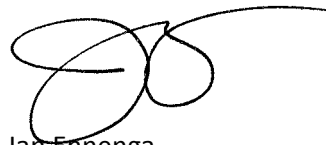
**ANOTHER OPTION**

As we stated at the outset of our comments, MCCV and CLFP strongly urge the Air District to scrap the current proposed rule. Instead, the District could meet its State Implementation Plan obligation by requiring that employers with 100 or more eligible employees annually distribute information designed and provided by the Air District concerning the variety of trip reduction opportunities, personal responsibility, and just how important personal actions are in helping improve valley air quality. This could be done in a number of ways, and examples include hosting a district presentation; conducting a "healthy air fair;" events; contests, or distributing flyers or providing another venue to some means of sharing information with employees about their personal impact on the valley's air quality utilizing materials designed and provided by the Air District for this specific purpose

We would like to meet with you to further discuss and detail the difficulties our members face in implementing the rule as currently drafted, as well as our proposed alternative. We look forward to hearing from you.



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