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**VIA ELECTRONIC MAIL (cob@aqmd.gov) AND VIA OVERNIGHT DELIVERY**

Chair William Burke and Governing Board Members  
South Coast Air Quality Management District  
21865 Copley Drive  
Diamond Bar, CA 91765-4178

**Re: Comments to Proposed Rule 2305 – Warehouse Indirect Source Rule – Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program (“PR2305”) and Proposed Rule 316 – Fees for Regulation XXIII (“PR316” and collectively with PR2305, the “Proposed Rules”)**

Ladies and Gentlemen:

This firm represents Warland Investments Company and affiliated entities (collectively, “Warland”), which has real estate holdings consisting of over 3.5 million square feet of space within the South Coast area. Warland’s presence brings great value to the area by maintaining facilities that draw first-class operators. Warland is an interested party in that its holdings include numerous warehouses that would be impacted by the Proposed Rules referenced above. As such, Warland hereby respectfully submits its comments on the Proposed Rules prior to the final vote by South Coast Air Quality Management District (“SCAQMD”) regarding the same.

While Warland supports the SCAQMD’s intended objectives of reducing emissions of nitrogen oxides and particulate matter in order to improve air quality, Warland objects to adoption of the Proposed Rules as written for the reasons set forth below.

I. Lack of Legal Authority.

A. PR2035 Exceeds SCAQMD’s Indirect Source Rule Authority.

Section 40440 of the California Health and Safety Code authorizes SCAQMD to adopt indirect source rules that serve to provide controls (i) for areas of the South Coast District “in which there are high-level, localized concentrations of pollutants”, or (ii) related to “any new source that will have a significant effect on air quality in the South Coast Air Basin”.

Under PR2305 Section (b) (Applicability), PR2305 would apply to all owners and operators of warehouses located in the SCAQMD jurisdiction with at least 100,000 square feet of indoor floor space in a single building that may be used for warehousing activities by one or more warehouse operators. PR316 would apply to owners and operators of facilities subject to PR2305. Accordingly, as drafted, the Proposed Rules would apply to all warehouses of a certain size, without any regard to whether the warehouse in question is

either located in an area “in which there are high-level, localized concentrations of pollutants” or already exists and, therefore, is not a “new source”. This attempt to regulate warehouses based on size via an indirect source rule alone clearly exceeds SCAQMD’s authority pursuant to the California Health and Safety Code.

B. SCAQMD Lacks Authority to Impose Special Taxes.

The Proposed Rules, if adopted, would require owners and operators of warehouses with at least 100,000 square feet of indoor space in a single building to either (i) reduce emissions through certain and arguably non-feasible methods, or (ii) pay a so-called “mitigation fee”. However, any such charge must meet certain requirements under the California Constitution to be deemed a permitted fee rather than a special tax. In this case, the proposed “mitigation fee” does not satisfy those requirements.

Proposition 26, approved by voters in 2010, expressly defined the distinction between taxes, which require a vote of two-thirds of the electorate in order to be enacted, and fees, which regulatory agencies have authority to impose. Any taxes or fees enacted on or after January 1, 2010 must comply with the requirements of Proposition 26, which became Article XIII C, section 1 to the California Constitution. The “mitigation fee” contemplated by the Proposed Rules is not a permitted fee under such section because it (i) does not provide a specific benefit to the payor, (ii) is not fairly apportioned among payors, (iii) generates money for a regulatory program, and (iv) is not reasonable. As such, the “mitigation fee” would be considered a special tax, rather than a fee, under the California Constitution. SCAQMD does not have authority to impose any special tax without first obtaining approval of two-thirds of the electorate, which approval has not yet been obtained.

II. The Proposed Rules Will Negatively Impact the South Coast Area.

The Proposed Rules unduly burdens warehouse owners and operators in that they would have to either assume substantial costs of upgrading their facilities and/or purchasing near-zero emission trucks, or assume an average annual compliance cost of approximately \$0.90/square foot as soon as the year 2025. Although improving air quality is important to South Coast businesses and residents, the Proposed Rules will substantially increase the costs to operate by warehouse owners and operators, which will in turn increase the costs of goods and services for those same businesses and residents. Even more critically, the Proposed Rules will almost certainly drive warehouse owners and operators, as well as jobs, out of the South Coast area. The potential negative economic impact of the Proposed Rules cannot be overstated and demands further evaluation.

III. Compliance with Proposed Rules is Not Feasible.

As noted by many other citizens and groups opposing the Proposed Rules, much remains unclear on how warehouse owners and operators would feasibly comply with the Proposed Rules. For example, numerous proposed scenarios in the Staff Report on the Proposed Rules (“PDSR”) suggest compliance could be achieved by purchasing near-zero emissions trucks with a gross vehicle weight rating of greater than 33,001 pounds; however, no such trucks are currently commercially available. As another example, the PDSR contemplates installing charging stations at warehouse facilities, but the PDSR lacks sufficient analysis on how warehouse charging stations would be built, where such charging stations would fit within existing warehouse properties, and how the existing electrical infrastructure is sufficient to support such charging

Chair William Burke and Governing Board Members  
South Coast Air Quality Management District  
March 19, 2021  
Page 3

stations. In addition, the PDSR's "estimated" costs of compliance for the Proposed Rules are based on just eighteen (18) different theoretical scenarios; however, many other complicated compliance scenarios would be bound to arise and the projected cost of compliance for such scenarios remains unknown. Some potential credits are discussed in the PDSR and Proposed Rules, such as the State Implementation Plan Credit, but such credits are unclear and no defined guidelines exist to obtain such credits. At this time, compliance with the Proposed Rules appears generally unfeasible for most warehouse owners and operators, which suggests the proposed "mitigation fee" will ultimately serve as such parties' sole source of compliance. Adopting the Proposed Rules without first outlining reasonable metrics for compliance is unreasonable and will not achieve SCAQMD's stated objections of improving air quality.

In conclusion, the Proposed Rules should not be adopted as drafted. SCAQMD lacks legal authority to impose the PR2035 as an indirect source rule. The "mitigation fee" is not a permitted fee and, therefore, SCAQMD lacks authority to impose it. The Proposed Rules will profoundly impact warehouse owners and operators, which will, without question, negatively impact the South Coast economy as a whole. Finally, there are no feasible metrics for compliance outside of paying annual mitigation fees. We respectfully request that SCAQMD disapprove the Proposed Rules until the foregoing issues have been thoroughly and appropriately addressed and resolved.

Regards,



Allyssa J. Holcomb

cc: Mr. Carl W. Robertson, Jr. (via email)  
Ms. Hope I. Warschaw (via email)