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August 13, 2008

Via Facsimile and E-Mail

Carlos Garcia
San Joaquin Valley Unified Air Pollution Control District
1990 East Gettysburg Avenue
Fresno, California 93726

Re: **Comments to Proposed Revisions to Rule 2201**

Dear Mr. Garcia:

On behalf of the Community Alliance for Responsible Environmental Stewardship (“CARES”), we submit the following comments to the proposed revisions to Rule 2201. CARES is an environmental coalition of California’s dairy producer and processor associations, including the state’s largest producer trade associations (Western United Dairymen, California Dairy Campaign and Milk Producers Council) and the largest milk processing companies and cooperatives (including California Dairies, Inc., Dairy Farmers of America-California, and Land O’ Lakes). Formed in 2001, CARES is dedicated to promoting a balance of economic and environmental sustainability for California dairies.

Rule 2201, Section 4.6.9 - Emission Offset Exemptions

Section 4.6.9 should be revised to clarify that agricultural sources are exempt from emission offset requirements until the District allows agricultural sources to obtain credit for emission reductions. The District has taken actions that will have the effect of reducing the federal major source threshold for ozone precursors from 25 tons to 10 tons, which may potentially affect new or expanding dairies. CARES is therefore concerned with how section 4.6.9 may be interpreted.¹ Some may incorrectly interpret the provision as requiring the District to ignore state law and require major agricultural sources to obtain offsets without any opportunity to obtain credit for emission reductions.

Existing section 4.6.9 currently provides the following exemption:

Agricultural sources, to the extent provided by California Health & Safety Code, section 42301.18(c), except that nothing in this section shall circumvent the requirements of section 42301.16(a).

¹ To the extent any dairies are affected, the number may be small. The District will need to reevaluate the available information and research regarding non-fugitive VOC emissions. CARES will provide additional information and work with the District in this regard as determinations regarding non-fugitive emissions are developed.

Section 42301.18(c) prohibits any district from requiring agricultural sources to obtain offsets until agricultural source reductions meets the criteria for creditability. Pursuant to this statute, the District does not have the requisite state authority to require emission offsets unless the offsets can be credited. Thus far, the District has not allowed the creditability of any dairy source emission, on an industry-wide basis, as such reductions fail, according to the District, to meet District and federal criteria for “real, permanent, quantifiable, and enforceable” emission reductions. Indeed, the District and CAPCOA have maintained that EPA must approve the protocol for establishing the creditability of dairy or other agricultural emissions before they can be applied at the district level. Under State law, until such emissions are creditable, the District cannot require them. CAL. HEALTH & SAFETY CODE § 42301.18(c). Importantly, section 42301.18(c) applies to *all* agricultural sources, not just agricultural sources that are not federal major sources.

Section 42301.16(a) only requires that agricultural sources obtain permits “*consistent with federal requirements*” and not necessarily in *compliance* with federal requirements. The Clean Air Act generally requires certain emission offsets from new or expanding federal major sources.

To the extent there is a conflict between sections 42310.16(a) and 42301.18(c), the more specific provision - section 42301.18(c) - must control. However, the conflict may be resolved because not requiring emission offsets for major agricultural sources is consistent with federal requirements to the extent it is not possible for emission reductions from such sources to be provided credit. The Clean Air Act and implementing regulations and guidelines all contemplate that any source or source category from which offsets are required must also have the opportunity to obtain credit for emission reductions. For example, the very statute which requires offsets for modifications of major sources in extreme nonattainment areas also requires that the source have the opportunity to offset the increase using on-site reductions at another permitting unit. Clean Air Act § 182(e)(2); *see also* Clean Air Act § 173 (c); 40 CFR 51.165 (a)(1)(vi)(A); *see also* 40 CFR Part 51, Appendix S. EPA and the Clean Air Act requirements also contemplate, for example, that emission reductions from an existing source that shuts down could be credited to a new replacement source and that emission reductions from the same category of sources would also be creditable. It would be an unprecedented distortion of the Clean Air Act to require offsets from a source or category of source from which no emission reductions can be credited to offset emission increases from the same source or other sources. It would be like applying one half of the law but not the other.

To require offsets from a major dairy source(s) without allowing credits from the same or other major dairy source(s) would impose an unfair and irrational burden on agriculture, and agriculture *alone*. Agricultural source(s) will be unable to grow without incurring extraordinary costs unique to the agricultural industry.² There is no rational basis to require credits but not

² Requiring agriculture to buy offsets, but not allowing credits for agricultural emission reductions, would also unfairly reduce any potential surplus in offsets at the expense of the dairy industry.

allow their banking, especially when to do so would conflict with the letter and intent of the Clean Air Act. Such unfair, unequal and irrational treatment of the dairy industry may even violate the Equal Protection Clause.

Until the District allows sources to obtain credit for and bank emission reductions, the District cannot require dairies to obtain emission reduction credits to construct or modify major sources. The existing exemption at section 4.6.9 should be more plainly stated in order to avoid confusion and potential litigation.

Alternatively, the District should provide for the creditability of emission reductions from dairy sources with EPA approval as of the effective date of the revised Rule 2201.

If nothing else, the District should make it clear that operators may net out on-site emissions before triggering emission offset requirements. However, this alone will not be enough.

Rule 2201, Section 3.23

The District should consider the South Coast Air Quality Management District's approach to major modifications in another district designated as extreme. There, the threshold is 1 lb. per day threshold for BACT with a 0.5 lb per day, 30 day average, threshold for offsets. As proposed, some could argue that a single molecule increase in emissions arising from a modification could trigger Rule 2201 requirements.

Rule 2201, Section 2 and Section 5.1

Section 2 provides that the Rule is applicable to any application that is incomplete as of the effective date of the Rule. Section 2 should be revised to provide that it is applicable to incomplete applications to the extent the Administrator has provided timely notice of its incompleteness.

Section 5.1 requires the Administrator to notify the applicant within 30 days of receipt of the application that the application is complete. If the Administrator fails to so notify the applicant within the 30 days, it is unclear whether the application is deemed complete. Applicants should not be subject to greater permit requirements because of the Administrator's failure to properly notify the applicants and provide them the opportunity to complete the application before the more stringent requirements go into effect.

Section 5.1 should also be amended to deem an application complete if the Administrator fails to notify the applicant within thirty (30) days that the application is incomplete.

Rule 2201 and Rule 2020, Section 6.20

The Staff Report comments on the impact of the change in attainment status and major source definition in Rule 2201 on permitting requirements for existing dairies. (Staff Report, p.5) With the change in the definition of major source threshold, the half a major source exemption required by California Health & Safety Code 42301.16 will be dropped from 12.5 tons to 5 tons.

We request that the District consider a revision to Rule 2020 which would maintain the current exemption at 12.5 tons, at least until such time as the existing thresholds for Rule 4570 are decreased. Section 42301.16 only requires permits for major agricultural sources, but exempts those below the half a major source threshold. We understand that the District intends to drop the threshold for Rule 4570 so that the same dairies will be subject to the same rule. Requiring the dairies to obtain a permit sooner will only result in substantial paperwork and expense without any meaningful impact on air quality.

We also note that the language of section 42301.16(3)(b) differs from the language of section 40724.6(c) in terms of how the major source threshold should be calculated. Section 42301.16 (3)(b) simply refers to major source threshold -which means only non-fugitive emissions are counted. Whereas 49724.6(c) expressly requires that fugitive emissions are included in the calculations. Despite past practices, the District should adhere to the statutory language.

California Environmental Quality Act

The District may wish to consider how requiring offsets from dairies without allowing credit may have an impact on the environment. Dairy operators who would otherwise modernize, improve and expand, may include additional or more efficient mitigation measures which may exceed what is currently in place or required. As dairy operators improve and update their operations, they generally want to include the most efficient, sanitary and environmentally sound and feasible measures for their operations. While such improvements may include the capacity for additional cows, they may also result in a net decrease in emissions due to lower actual use (i.e. below capacity) or increased efficiency in reducing emissions. However, efficiencies in one unit of the dairy may not be creditable to offset the potential increases elsewhere. To the extent the District requires emission offsets without allowing credit for reductions, dairy operators will be disincentivized from improving and modernizing their operations, potentially resulting in greater emissions.

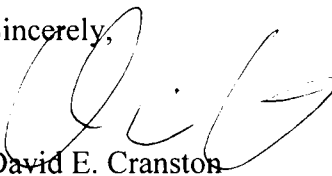
Similarly, by requiring the purchase of offsets - without the availability of credit for reductions - the District may be creating a significant economic impediment that will prevent large dairies from modernizing their operations and taking on herds from less efficient operations potentially resulting in more emissions to the basin. Modifications at dairies are often undertaken or may be undertaken in the future to add additional capacity for herds that have been

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relocated from another dairy, sometimes owned or acquired by the expanding dairy. The modifications for the major source expanding dairy are likely to have more efficient controls than the dairy from which the herd originated, particularly if the herd is moved from a less regulated dairy (i.e. below 1000 milking cows and not subject to Rule 4570). The same result would be true for dairies (including those not subject to Rule 4570) that might otherwise shut down in order to move their herd to another more modern and larger operation with greater emission controls.

Thank you for your careful consideration.

Sincerely,



David E. Cranston

DEC/sl

cc: Dave Warner, SJVAPCD (*Via E-Mail - dave.warner@valleyair.org*)
William Van Dam
J.P. Cativiela