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## SCAQMD Proposes New Rule to Reduce Construction and Operational NO<sub>x</sub> Emissions From New and Redevelopment Projects

The South Coast Air Quality Management District (SCAQMD) is considering adopting Proposed Rule 2301 (PR 2301), which if adopted as presently proposed,

**Information in this alert directly affects developers.**

would require developers of many new development and redevelopment projects in the South Coast Air Basin (the counties of Los Angeles, Orange, Riverside and San Bernardino), generating relatively modest amounts of nitrogen oxide (NO<sub>x</sub>), to obtain discretionary approval from SCAQMD before the projects may move forward. The Governing Board of the SCAQMD could hold public hearings to decide on adoption of PR 2301 as early as March. PR 2301 could be adopted as early as summer 2009 with implementation by January 1, 2010. A copy of PR 2301 may be downloaded off the [SCAQMD website](#).

The goal of PR 2301 is to reduce construction and operational NO<sub>x</sub> emissions from new and redevelopment projects. The vehicle for this reduction is imposition of a new required discretionary process, approval of a Compliance Plan, administered by SCAQMD if projects generate NO<sub>x</sub> beyond certain thresholds. For projects meeting or exceeding the operational NO<sub>x</sub> threshold, a Compliance Plan must be approved by the SCAQMD before publication of a Notice of Availability of an EIR or negative declaration. As presently drafted, Compliance Plan approval will be required for the following projects:

- Effective January 1, 2010, projects exceeding 10.0 tons per year of NO<sub>x</sub>.
- Effective January 1, 2011, projects exceeding 4.0 tons per year of NO<sub>x</sub>.
- Effective January 1, 2012, projects exceeding 2.0 tons per year of NO<sub>x</sub>.

To put these thresholds into context, for CEQA purposes, the current SCAQMD maximum daily project emission thresholds of significance for NO<sub>x</sub> is 100 pounds per day, which equates to approximately 17 tons per year, for construction activities and 55 pounds per day, which equates to approximately 9 tons per year, for operational activities. The PR 2301 January 1, 2012 threshold would be met or exceeded by projects generating approximately 700 or more total vehicle trips per day. This means, unless any exemptions are applicable, PR 2301 likely would trigger the need for a Compliance Plan for a typical 75-unit

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single-family residential project, a 20,000 square foot retail project, and an approximately 125,000 square foot industrial project.

The Compliance Plan must demonstrate implementation of sufficient emission reduction measures that achieve emission reductions equal to or below a not yet specified percentage beyond the July 1, 2009 Title 24 standards. In addition, transportation emission reduction measures must be implemented that will achieve a certain minimum number of points based on the PR 2301 Guidance Document. The Guidance Document has not yet been published on the SCAQMD website. However, there is a working draft of a list of the transportation emission reduction measures contemplated to be included in the Guidance Document available on the SCAQMD website. A copy of the version of this list dated January 21, 2009 was downloaded from the SCAQMD website and is available [here](#).

NOx is not one of the greenhouse gases (GHG) subject to regulation under AB 32. According to the SCAQMD staff, the purpose of PR 2301 is to satisfy SCAQMD's responsibilities to reduce NOx emissions as set forth in the SCAQMD's 2007 Air Quality Management Plan, not to help achieve the GHG reduction standards of AB 32. It is unclear how PR 2301 will affect the implementation of, or compliance with, SB 375 and other legislation and regulations that may be adopted to implement AB 32. For example, if a project is eligible for the SB 375 CEQA streamlining or exemption provisions, but still generates more than the PR 2301 NOx threshold, and is not otherwise exempted from PR 2301, will a Compliance Plan with emission reduction measures still be required?

Transportation and transit projects, projects at airports and marine ports, and reconstruction projects to uses that are the same use and intensity would all be exempt from PR 2301. Projects that are determined to have operational emissions of less than 2.0 tons per year are also exempt from PR 2301. However, the lead CEQA agency is required to retain records showing that those such exempted projects actually operate at or below the 2.0 tons per year of NOx threshold. Such monitoring must continue for at least two years after the project operation commences.

Persons failing to comply with PR 2301 are subject to civil and criminal penalties. Because PR 2301 would require implementation of operational emission reduction measures, project proponents must be prepared to secure commitments to such measures from the future operators of projects. PR 2301 does not currently address whether a project developer may be held liable for the failure of a project operator to comply with the emission reduction measures in PR 2301 and any approved Compliance Plan.

The next stakeholder working group meeting is currently scheduled for February 25, 2009 at the SCAQMD headquarters. Public comments concerning PR 2301 will be taken in advance of, and at, this meeting. Public comments will also be taken prior to and at any hearing of the

**SCAQMD Governing Board.**

Please contact us if you have any questions about PR 2301 and how it may affect your current and/or future projects.

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