

SUMMARY OF COMMENTS AND RESPONSES TO PROPOSED REVISIONS TO THE GAMAQI-2012

On April 9, 2012 the District provided notice of a public workshop to present, discuss, and receive comments on draft revisions to the District document *Guidance for Assessing and Mitigating Air Quality Impacts – 2012* (GAMAQI). The District conducted the public workshop on April 25, 2012. The public comment period closed May 9, 2012.

During the workshop the District received comments regarding the proposed guidance for when to conduct an ambient air quality analysis. The discussion illustrated the need to provide additional clarity regarding evaluation of emissions from permitted and non-permitted equipment and activities, onsite versus offsite emissions and evaluation of construction versus operational emissions. Upon consideration of comments received during the workshop and subsequent written comments, the GAMAQI has been revised accordingly.

Stakeholders providing written comments:

Kleinfelder, (KF)
Quad Knopf, Inc., (QK)

Comments are summarized below. For completeness of the administrative record a copy of the original comment letter is enclosed as Attachment B.

1. **Comment:** The evaluation of infrastructure projects such as streets, canals and levees is not addressed in the GAMAQI. Models such as URBEMIS and CalEEMod focus on conventional development projects. Sac Metro's Road Construction Model, while better, is not precisely applicable to projects such as levees and canals. I would like to see the GAMAQI address the issue of evaluation of infrastructure projects. (KF)

Response: The GAMAQI presents general guidance for assessing and mitigating project related impacts on air quality. Guidance regarding methodologies and models to be used in assessing specific project types is intended to be addressed in separate technical guidance documents that can evolve with improvements in models and methodologies. The commenter is encouraged to contact staff to discuss the technical issues of estimating emissions from infrastructure projects.

2. **Comment:** I would like the GAMAQI to recommend a model for quantification of emissions from infrastructure projects. (KF)

Response: As discussed above, guidance regarding specific models and methodologies is outside the intended scope of the GAMAQI. Depending on the known level of project details, we currently recommend that emissions from construction of infrastructure projects be calculated using ARB's Off-Road 2011 and EMFAC 2011 models. The commenter is encouraged to contact District staff for project-specific guidance.

3. **Comment:** It would be helpful if the District could provide more information showing that a VERA (Voluntary Emissions Reduction Agreement) is not over mitigating a project's impacts. (QK)

Response: The level of mitigation required by the lead agency is not established by a VERA, and therefore a VERA cannot over-mitigate a project. The degree of mitigation of project specific impacts on air quality is established by the lead agency, consistent with CEQA and community expectations, and CEQA does not require mitigation beyond the level of the impacts of a given project. A voluntary emissions reduction agreement (VERA) is just one of the tools available to help achieve the mitigation required by the lead agency.

4. **Comment:** Why is compliance with Rule 9510 not sufficient mitigation if that rule was adopted to mitigate growth and development in the San Joaquin Valley? (QK)

Response: Rule 9510 (Indirect Source Review) requires developers to reduce project specific construction exhaust emissions of NO_x and PM₁₀ by 20 percent and 45 percent respectively; and to reduce operational emissions of NO_x and PM₁₀ by 33.3 percent and 50 percent respectively. Project proponents have the option of achieving the reductions through on-site measures or paying off-site mitigation fees, which are used by the District to fund emission reduction projects. The level of emission reductions to be achieved through implementation of ISR was established to incentivize developers to design development projects which have a reduced impact on air quality, not reduce project specific impacts to less than significant levels under CEQA.

For many projects, compliance with Rule 9510 (ISR) will reduce project specific emissions of NO_x and PM₁₀ to less than significant levels. However, for certain development projects the required percentage reductions may not be sufficient to reduce project specific emissions to below the District's threshold of significance. For example, a regional distribution center generating 30 tons of operational NO_x emissions per year would be required to reduce NO_x emissions by 10 tons (33.3% of 30). The remaining, unmitigated 20 tons of NO_x exceeds the District's NO_x threshold of significance of 10 tons per year. Thus, the project would have a significant impact on air quality.

5. **Comment:** While Rule 9510 has undergone a CEQA level analysis and withstood several nexus challenges, the VERA has not undergone such a public environmental review process consistent with CEQA to determine whether payment of the fee will result in full mitigation. (QK)

Response: The commenter's characterization that use of a VERA as mitigation has not undergone public environmental review process consistent with CEQA is incorrect. Since 2005, the District has implemented about seventeen VERA. These VERAs were identified as mitigation measures within environmental documents that underwent public review as part of the CEQA process. In the case of the EIR certified by the County of Kern when approving the Tejon Industrial Complex East, the judge ruled on behalf of Kern County and upheld the CEQA analysis, specifically citing the VERA.

Regarding whether payment of fees identified in a VERA will result in full mitigation, CEQA Guidelines, as amended in 1998, clearly recognize the use of fee payments as mitigation. Under CEQA, an agency may rely on payment of fees as mitigation where the agency reasonably expects that such fees actually will be used for mitigation. As discussed in the GAMAQI, VERAs are implemented through the District's Emission Reduction Incentive Program (ERIP). As such, the fees are used by the District to fund sufficient emission reduction projects; achieving the required mitigation. Under the VERA process, the District verifies the actual emission reductions that have been achieved as a result of completed grant contracts, monitors the emission reduction projects, and ensures the enforceability of achieved reductions. The VERA process is transparent to the public. Thus, it is totally reasonable to conclude that payment of fees under a VERA ensures that project specific impacts on air quality can be fully mitigated.

6. **Comment:** It would be helpful to have additional detail on how the District prepares VERA contracts for construction and operational emissions that exceed the regional thresholds. (QK)

Response: A template for establishing a VERA contract is available on the District's website, and each VERA is negotiated with the project proponent, with the lead agency's concurrence.

7. **Comment:** Some air districts provide information such as how excess emissions are estimated over the life of the project and the cost of reductions based on Carl Moyer guidelines. This would provide agencies and applicants with information to determine if a VERA is economically feasible. (QK)

Response: We agree that tools should be made available to project proponents and lead agencies to help in making determinations about whether VERA's are feasible, and we plan on continuing our efforts to provide those tools. It is important to note that determining economic feasibility of implementing a VERA

requires more consideration than cost per ton and total tons required to reduce project emissions to less than significant levels. Finding that a mitigation measure is not economically feasible is fundamentally a determination that the additional cost or loss of profitability are sufficiently severe to render it impractical to proceed with the project. Furthermore, while it may not be economically feasible to mitigate project specific emissions to less than significance levels, CEQA precludes a public agency from approving a project as proposed if there are feasible alternatives or mitigation measures available that would *substantially lessen* (emphasis added) any significant effects that the project would have on the environment. Thus, determining economic feasibility of implementing a VERA is very project specific and the analysis should consider not only total cost, but the extent to which it is feasible to mitigate project specific impacts on air quality.

8. Comment: It is suggested that the District prepare localized significance thresholds based on background concentrations of criteria pollutants instead of the proposed thresholds for when to conduct an ambient air quality analysis. (QK)

Response: There are various approaches to establishing guidance for when to conduct an ambient air quality analysis, each of which has its own merit. The guidance proposed in GAMAQI-2012 is consistent with New Source Review requirements and the District's permitting processes. Based on the District's considerable experience in implementing NSR, the District concludes that the proposed guidance will capture those projects which should be evaluated in detail for ambient air quality impacts.

9. Comment: Perhaps the District can create screening models than can indicate when an ambient air quality analysis will be triggered. (QK)

Response: We agree, and the District will be developing screening tools to streamline the process of identifying projects that could exceed the proposed guidance thresholds.

10. Comment: The trigger to conduct an ambient air quality analysis should not rely on exceedance of a regional threshold. (QK)

Response: The proposed trigger to conduct an ambient air quality analysis is not limited to an exceedance of regional thresholds. The 100 lb/day threshold is an NSR requirement, and captures projects with the potential to have localized impacts.