Southern California Association of Publicly Owned Treatment Works, 
Eastern Municipal Water District, Small Business Alliance, Southern California Gas 
Company, Southern California Air Quality Alliance, Western States Petroleum 
Association, Orange County Sanitation District, Los Angeles County Sanitation 
Districts, Irvine Ranch Water District, City of Corona, Department of Water and 
Power, City of Riverside Public Works Department, City of San Bernardino 
Municipal Water Department, Inland Empire Utilities Agency, South Orange County 
Wastewater Authority, California Independent Petroleum Association, California 
Association of Sanitation Agencies, Regulatory Flexibility Group, Waste Management

October 15, 2015

Dr. Philip Fine, Deputy Executive Officer
Planning, Rules Development & Area Sources
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Dear Dr. Fine:

Comments on Proposed Amended Rule 1110.2 –
Sections Related to Breakdowns/Malfunctions

We appreciate this opportunity to provide comments on Proposed Amended Rule 1110.2. 
Our coalition fully supports SCAQMD Governing Board’s adoption of the proposed biogas 
amendments allowing the affected parties additional time to come into compliance with this rule. 
However, we are concerned about the proposed changes to the breakdown provisions. While 
seemingly benign in the context of Rule 1110.2, it is our opinion that they represent a fundamental 
change in SCAQMD enforcement policy by potentially altering how breakdowns are handled for 
all industries, especially industries that currently utilize Rule 430. Because of these widespread 
implications, we respectfully request that the rule be bifurcated to facilitate the approval of 
proposed biogas provisions, while allowing time for a thorough assessment of the policy issues, 
especially in light of EPA’s new and evolving startup, shutdown, and malfunction (SSM) policy.

We understand that SCAQMD staff is proposing changes to the Rule 1110.2 breakdown 
provisions, in response to EPA’s concerns about the July 9, 2010 amended version of Rule 1110.2, 
which was submitted for SIP approval in 2014. EPA believes that the existing breakdown 
provisions are inconsistent with new national SSM policy, and would prevent full approval of the 
rule. More specifically, these concerns stem from EPA’s new and evolving SSM policy published 
in the Federal Register, Vol, 80, No. 113 on June 12, 2015 (36-State SIP Call). SCAQMD staff 
presented the proposed amended breakdown language on July 9, 2015 at a Rule 1110.2 Public 
Workshop, which was predominantly attended by biogas engine operators. In effect, the proposed 
breakdown provisions would establish a new SCAQMD SSM policy that could reach far beyond 
Rule 1110.2 and be applicable to any equipment operating during a SSM event.
As stated, we believe it is premature to proceed with the proposed Rule 1110.2 breakdown provisions until the general policy implications are vetted with all impacted industries. Also, we believe that it is premature to establish a new SCAQMD SSM policy because of two pending appellate court petitions that could affect EPA’s national SSM policy: (1) August 11, 2015, U.S. Court of Appeals for the District of Columbia Circuit, Case No. 15-1267 filed by 17 states claiming that “…EPA erroneously concluded that the following State’s EPA approved State Implementation Plans are ‘substantially inadequate’ with respect to periods of startup, shutdown and malfunction and must be revised.”, and (2) July 8, 2015, U.S. Court of Appeals for the Fifth Circuit, Case No. 15-60424 filed by the State of Texas requesting “…that the Court review those parts of EPA’s Final Rule that apply to the State of Texas, including…four provisions in Texas’s approved State Implementation Plan..., which provide affirmative defenses for certain upset events, unplanned events, and opacity events…” The EPA SSM policy being challenged, itself rose from court challenges by environmental groups. Clearly, EPA’s new policy has yet to withstand some significant legal challenges which, if successful by the plaintiffs, will once again alter EPA’s SSM national policy.

In addition to the legal challenges facing EPA’s new SSM policy, the policy itself is rather nebulous and is subject to interpretation. For example, “…The EPA emphasizes that there are other approaches that would be consistent with CAA requirements for SIP provisions that states can use to address emissions during SSM events. While automatic exemptions and director’s discretion exemptions from otherwise applicable emission limitations are not consistent with the CAA, SIPs may include criteria and procedures for the use of enforcement discretion by air agency personnel.” At minimum, there is a tremendous amount of flexibility provided to the states.

In addition, we believe that the proposed breakdown language may be inconsistent with the intent of EPA’s new SSM policy outlined in the June 12 Federal Register posting. EPA’s policy explains that states and air districts must maintain EPA’s authority to enforce and allow citizen suits. The policy calls for SIP revisions to remove deficient provisions, including “…enforcement discretion provisions that have the effect of barring enforcement by the EPA or through a citizen suit and affirmative defense provisions that are inconsistent with CAA requirements…” Proposed amended rule language contains provisions that, in our opinion, may not comply with the intent of EPA’s policy.

As outlined, there are significant uncertainties in EPA’s national SSM policy due to litigation and policy interpretation difficulties, and any changes to SCAQMD SSM policies are going to impact most industries. In addition, SCAQMD was not included in EPA’s 36-State SIP Call. Therefore, rather than rushing to resolve EPA’s potential objections at this time, we respectfully request that staff: (1) perform a thorough legal review and analysis of EPA’s new policy; (2) assess the validity of pending litigation; and (3) convene a working group to discuss what direction SCAQMD’s staff should take on its SSM policy approach.

Also, we understand that SCAQMD staff would like to provide the Governing Board an EPA approvable rule. However, we believe bifurcation of the rule, so the new biogas engine amendments can be adopted, would be the most prudent approach. We also believe that all options should be kept open, so in the spirit of cooperation, we could support the deletion and modification of the objectionable language, as identified by EPA. Specifically, we recommend modifying paragraph (f)(1)(D)(v)(III) of the rule as follows:
“An operator shall not be considered in violation of the emission limits of the rule or in permit conditions, due to a breakdown or malfunction, if the operator shall comply with this subparagraph and the reporting requirements of subparagraph (f)(1)(H). Any emission check conducted by the District staff that finds excess emissions is a violation.”

We believe such a modification directly addresses the intent of EPA’s SSM policy. There are other changes that would be needed to ensure consistency throughout the rule with this approach, but these changes could be worked out quickly. At your earliest convenience, we would like to meet with you and your staff to discuss this proposal, as well as the bifurcation approach.

Thank you for the opportunity to comment on the proposed amended rule. If you have any questions regarding our concerns or recommendations, please do not hesitate to contact David Rothbart at (562) 908-4288, extension 2412.

Sincerely,

David Rothbart, P.E.
Air Quality Committee Chair
Southern California Association of Publicly Owned Treatment Works
(562) 908-4288, ext. 2412

Bill LaMarr
Executive Director
Small Business Alliance
(714) 778-0763

Curt Coleman
Executive Director
Southern California Air Quality Alliance
(310) 348-8186

Jim Colston
Environmental Compliance Manager
Orange County Sanitation District
(714) 593-7450

Edward Filadelphia
Regulatory Affairs and Compliance Manager
City of Riverside Public Works Department
(951) 351-6080

Paul D. Jones II, P.E.
General Manager
Eastern Municipal Water District
(951) 928-3777

Daniel R. McGivney
Environmental Affairs Program Manager
Energy & Environmental Affairs
Southern California Gas Company
(909) 335-7793

Sue Gornick
Senior Coordinator, Southern CA Region
Western States Petroleum Association
(310) 808-2146

Frank Caponi
Division Engineer
Los Angeles County Sanitation Districts
(562) 908-4288

Paul A. Cook
General Manager
Irvine Ranch Water District
Irvine, CA 92619-7000
(949) 453-5300

Mike Carroll
Latham & Watkins LLP for Regulatory Flexibility Group
(714) 755-8105

Randy Beck
Director of Operations
WM Renewable Energy, LLC
Waste Management
(713) 265-1672
Sylvie Lee, P.E.
Manager of Planning and Environmental Resources
Inland Empire Utilities Agency
(909) 993-1600

Jonathan Daly
General Manager
City of Corona, Department of Water and Power
(951) 736-2477

Stacey R. Aldstadt
General Manager
City of San Bernardino Municipal Water Department
(909) 384-5091

Betty Burnett
General Manager
South Orange County Wastewater Authority
(949) 234-5419

Rock Zierman
Chief Executive Officer
California Independent Petroleum Association
(916) 447-1177

Greg Kester
California Association of Sanitation Agencies
Director of Renewable Resource Programs
(916) 446-0388