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DATE: December 17, 2009

TO: SJVUAPCD Governing Board

FROM: Seyed Sadredin, Executive Director/APCO
Project Coordinator: Scott Nester

RE: **ADOPT PROPOSED RULE 9410 (EMPLOYER BASED TRIP REDUCTION)**

RECOMMENDATIONS:

1. Adopt Proposed Rule 9410 (Employer Based Trip Reduction).
2. Approve the District's enhanced Healthy Air Living Partners Guidelines as a tool to help employers comply with Rule 9410, and authorize the APCO to make administrative changes or enhancements as necessary.
3. Authorize the Chair to sign the attached Resolution.

BACKGROUND:

The promulgation of Rule 9410 is mandated under the District's federal attainment plans for ozone and PM2.5 (the *2007 Ozone Plan* and the *2008 PM2.5 Plan*). Both the federal and California Clean Air Acts mandate nonattainment areas like the San Joaquin Valley to adopt all reasonable and feasible measures to reduce ozone precursor emissions. Proposed Rule 9410 (Employer Based Trip Reduction) was crafted as a feasible and cost-effective measure to meet the applicable state and federal mandates.

Today's recommendation was developed with extensive input from a wide variety of stakeholders including industry and business representatives, local municipalities, and environmental advocacy groups. The District held 11 public meetings as well as 20 meetings with interested employers, industry groups, and service organizations. The District also conducted one-on-one meetings with staff of each of the Valley's eight counties and a number of cities, including the 10 largest cities, as these are some of the Valley's largest employers. In total, District staff received and addressed comments from

approximately 400 individuals representing hundreds of thousands of commuters and a large number of employers.

DISCUSSION:

With more than 80 percent of the Valley's NOx emissions coming from mobile sources, Rule 9410 is designed to reduce commute-related Vehicle Miles Traveled (VMT), and thereby reduce passenger vehicle emissions. Toward that end, Rule 9410 would require large employers to implement marketing and educational programs, and provide the necessary infrastructure that encourages and enables employees to use alternative modes of commute transportation to work rather than use single-occupancy vehicles. Staff expects that Rule 9410 will reduce NOx and VOC emissions from passenger vehicle commute trips by approximately 1.2 ton per day, and that the Valley's largest employers can be the catalyst for broad, beneficial changes in commute transportation choices.

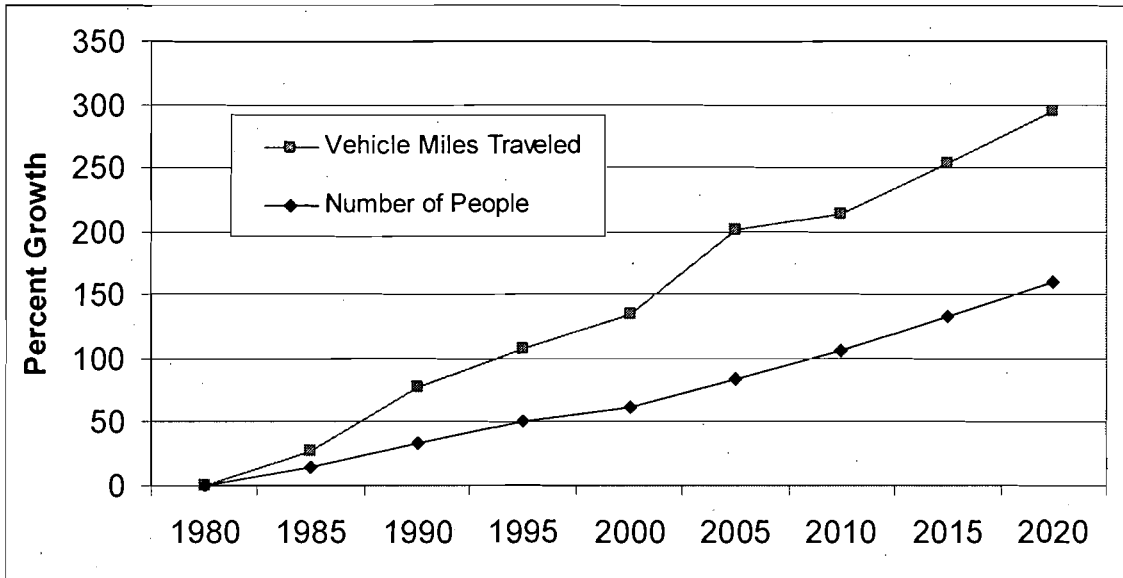
Guiding Principles: After careful consideration of issues and concerns raised by employers and other interested parties, the following guiding principles emerged in crafting today's recommendation:

1. It is not reasonable to expect that employers can require their employees to subscribe to a particular commute mode to work.
2. We should avoid a one-size-fits-all approach and allow employers to craft approaches that work best with their workforce, work culture, and available commute alternatives in their region.
3. We must understand and accommodate labor laws and employer liability issues.
4. We should minimize red-tape and administrative costs to enable employers to focus their resources on real measures that promote more air-friendly commute alternatives.
5. Employers should be given credit for measures that they have already put in place in advance of the rule.
6. The District is well-positioned to provide tools and turnkey measures to help employers meet their obligations without having to reinvent the wheel.
7. We should employ strong but streamlined accountability measures to ensure compliance and measure performance.

Led by the guiding principles above, Proposed Rule 9410 satisfies the applicable state and federal mandates with the following features:

Significant Reductions in Commute-Related Vehicular Emissions: As an “Extreme” non-attainment area for ozone, we need to reduce the Valley’s NOx emissions by 75% from the 2005 levels. Currently, the District’s 2007 Ozone Plan includes a “black box” that signifies a substantial shortfall in identifying the mandated reductions in emissions. In 2010, light and medium duty vehicles Valleywide will emit 44.7 tons per day of NOx, and 41.9 tons per day of VOCs. Decades of federal and state tailpipe controls have achieved remarkable reductions from passenger vehicles, but these reductions are being significantly eroded by growth in VMT. Therefore, the “black box” in the District’s 2007 Ozone Plan remains, even after taking credit for future reductions in tailpipe emissions. In the San Joaquin Valley, the growth in VMT has even exceeded the Valley’s higher-than-average population growth rate, as shown in Figure 1.

Figure 1: San Joaquin Valley Population and VMT Growth Since 1980



The Department of Transportation’s (DOT) National Household Travel Survey found that, as a nation-wide average, work commute VMT accounts for about 27% of total VMT for personal vehicle use. According to the Employment Development Department, about 36% of Valley employees are employed at worksite with 100 or more employees. It is estimated that full compliance with the proposed rule can reduce NOx and VOC emissions from commute-related trips to the facilities subject to this rule by 15% to 21%. An average reduction rate of 18% is assumed as a goal for calculating the projected emission reductions from Rule 9410. Therefore in 2014, it is estimated that Rule 9410, as proposed, will result in reductions of 0.6 tons per day of NOx and 0.6 tons per day of VOCs. These reductions are significant and are imperative in the District’s efforts to meet our enormously challenging federal mandates.

Applicability: Rule 9410 would require larger employers (those with 100 or more eligible employees at a worksite) to establish employee trip-reduction programs to

reduce VMT associated with work commutes. Eligible employees would not include the following:

- Employees who do not report to work between 6 AM and 10 AM;
- Emergency health and safety employees such as sworn peace officers and firefighters;
- Employment agency personnel;
- Farm workers;
- Field personnel;
- Field construction workers;
- Home garage employees;
- On-call employees;
- Part-time workers;
- Seasonal workers (employed 16 weeks or less per year); and
- Volunteers.

Rule 9410 would apply to an estimated 1,883 worksites throughout the Valley, representing a wide range of sectors and accounting for approximately 500,000 commuting employees from the public and private sectors. The rule categorizes worksites into two tiers. Tier One Worksites are those with 100-249 eligible employees and Tier Two Worksites have 250 or more eligible employees. There are an estimated 1,342 Tier One Worksites and 541 Tier Two Worksites.

Menu Option Approach: Rule 9410's menu-based approach gives employers the opportunity to choose the measures that are most effective for their individual situations. The menu option approach addresses the Valley's diversity of employers and transit limitations, offering each employer the flexibility to implement programs that can work best for their worksites and employees. Choosing from a menu of options provided in the rule, each employer would be required to prepare and submit an Employer Trip Reduction Implementation Plan (ETRIP). In addition to the options provided, the rule also allows for employers to offer their own specific proposals subject to approval by the District.

Each menu option has a point value, and employers would need to achieve specified point targets, depending on the size of their worksite, either Tier One or Tier Two. The ETRIP is a check-list of menu options that must cover four strategy areas and would be implemented in three phases.

Phase 1 will cover "Marketing" and "Program Support" strategies. The Marketing strategy includes measures to increase program awareness, such as being a **Healthy Air Living Partner**, distributing a rideshare newsletter, or posting a bulletin board dedicated to ridesharing and alternative transportation. The Program Support strategy makes ridesharing and alternative transportation easier for employees through programs like guaranteed ride home or ride-matching services.

Phase 2 will cover the “Services and Facilities” strategy, which will include measures deployed in the workplace so that employees are less likely to need to travel offsite for personal business during the workday. Examples include onsite food service and onsite postal service (i.e., stamps available for sale and a place to leave personal stamped mail).

Phase 3 will cover “Transportation, Alternative Schedules, and Incentives,” which will include a wide range of options such as comprehensive carpool and vanpool programs, monetary incentives for ridesharing, subsidized transit passes, and telecommuting.

Empirical data indicates that a successful overall strategy requires a multifaceted approach with adequate measures from each of the above strategy areas. Therefore, Rule 9410 specifies a minimum point obligation for each category. The “Additional Points Needed” category then allows each employer to satisfy the point requirements in the rule by selecting measures from any of the four strategy areas, or from measures prorated and applied to employees or worksites that are otherwise exempt from the rule.

Employers with eligible employees protected by the federal Migrant and Seasonal Agricultural Worker Protection Act will only be required to comply with Phase 1 and Phase 2 point targets. Phase 3 requirements would be inconsistent with federal regulations on these employers.

Phased-in Approach: Rule 9410 relies on strategies from three distinct phases to create a successful program for each worksite. Each phase is designed to address a critical component necessary to create an environment where employees are encouraged and enabled to participate in alternative commute options. To optimize the rule effectiveness in garnering employee participation, time is necessary to allow the three phases to fully take shape and build on each other. Also, recognizing the current economic downturn, the rule is designed to call for the measures that may be more costly or require more operational changes later, during Phase 3. The rule will be fully implemented over a five-year period as follows:

July 2010: Employers subject to Rule 9410 register with the District by providing information on the number of employees at each worksite and identifying trip-reduction measures already in place.

September 2011: Submit ETRIP for Phase 1 strategies (Marketing and Program Support).

January 2012: Begin implementing Phase 1 strategies.

September 2012: Submit ETRIP for Phase 2 strategy (Services and Facilities).

January 2013: Begin implementing Phase 2 strategy.

September 2013: Submit ETRIP for Phase 3 strategy (Transportation, Alternative Schedules, and Incentives) and measures needed for additional points requirements.

January 2014: Begin implementing Phase 3 and additional point strategies.

March 2015: Submit first annual report containing Commute Verification data for the previous calendar year

District Support and Assistance: Over the last four years, your Board has taken a number of actions to lead by example when it comes to promoting alternative modes of commuting by employees. Today, the District subscribes to nearly all measures outlined in this rule and conducts a daily survey of all employees concerning their commute choice to work. Nearly 50 percent of the District employees utilize commute options that reduce or eliminate VMT. The District also has extensive expertise and experience in effective marketing, public education, and application of labor laws and regulations.

Given the District's vast body of experience and expertise in this area and our remarkable success in employee participation, a number of employers asked that the District make a strong commitment to help employers comply with this rule. Toward that end, Rule 9410 assigns explicit responsibilities to the District for providing tools and resources to the employers, as well as offering points towards compliance for businesses that choose to take advantage of educational and outreach materials provided by the District.

Under Section 7 of Proposed Rule 9410, the District commits to extensive and continuous employer implementation assistance with training sessions, guidance, templates, newsletters, and turnkey program components. Elements of District support include:

- District webpage and listserv dedicated to Rule 9410;
- Employer Registration Template and an online registration option;
- Guidance and resources for each strategy area;
- Training sessions, organized and facilitated by the District, for each strategy area;
- Electronic ETRIP submittal system;
- Employee Commute Verification templates and online reporting options;
- Annual Report guidance, resources, and online reporting system.

Additionally, employers choosing to become a District **Healthy Air Living Partner** would receive six points toward complying with the Phase 1 requirements of Rule 9410. This single measure will fully satisfy the Phase 1 requirements for Tier One employers, and would satisfy six of the 10 points required for the larger Tier Two employers. Employers choosing to become a **Healthy Air Living Partner** as a means to comply with Rule 9410 would periodically receive sample newsletters, trainings, recognition,

and other strategic support. In exchange, they would commit to take advantage of the material provided by distributing outreach materials to employees and participating in District outreach strategies. Details of the Proposed **Healthy Air Living Partners** program are attached.

Accountability and Compliance: In adherence to our Number 1 guiding principle, Rule 9410 does not impose a specific employee participation rate on employers. No employee will be required to choose a particular way to commute to work. Rule 9410, however, requires adequate reporting to ensure that employers devise and implement their ETRIPs, and measure employee participation in alternative commute options. To minimize administrative costs, Proposed Rule 9410 will not require an employer-specific baseline survey. Instead, the District has utilized census data and other pertinent information to estimate baseline participation by Valley employees in alternative transportation.

Starting in the 2014 calendar year, employers would collect information on their eligible employees' commute modes for a one-week period through Commute Verification. Results are informational, helping the employer and the District assess the ETRIP's success in facilitating alternative transportation and ridesharing. The data from the Commute Verification will allow the District to claim emission reductions in the State Implementation Plan (SIP). The Commute Verification process asks the employees how they commuted to work (e.g., drove to work alone, carpooled, bicycled, zero emissions vehicle, or public transit) each day for a typical workweek. The employer can administer Commute Verification in one of two ways:

- In the first option, the employer distributes Commute Verification Forms to all eligible employees. Employers can use District-provided templates and reporting options. Employers may be able to incorporate this into an existing process, such as regular staff meetings, timesheets, or other employee form collection.
- In the second option, the employer may propose an alternative approach to collect data from a representative sample of eligible employees. Employers would submit their methodologies to the District for approval at least 120 days prior to the start of the calendar year in which the method would be used.

Commute Verification results would be reported to the District annually, starting in 2015. Employers would submit updated ETRIPs annually in conjunction with the annual reporting for Commute Verification.

Failure by the affected employers to submit timely ETRIPs, implement their ETRIPs, and comply with reporting requirements would constitute a violation of District Rules and Regulations and will be subject to enforcement action.

Co-Benefits: Compliance with Rule 9410 will not only enable the District to meet the applicable state and federal mandates, it will also bring about a number of additional co-benefits as follows:

- Economic advantage for employees by reducing commute-related costs, such as vehicle fuel, wear and tear, and maintenance;
- Improved employee morale and team building;
- Reduction in greenhouse gas emissions; and
- Significant assistance to cities and counties in meeting the mandates of SB 375 relating to reducing passenger VMT.

Public Review Process

The District has held 11 public meetings specifically on Rule 9410, including scoping meetings in February 2009, and workshops to discuss drafts of the rule in July, September, and October. An additional comment period on the Proposed Rule commenced November 16, 2009. Notices for workshops were sent by mail to more than 2,800 potentially affected stakeholders, and were also published in newspapers in every county. The draft rule and the related documents were made available on the District website and mailed to the list of interested parties and potentially affected employers. The District made significant efforts to improve the mailing list throughout the workshop process. The Executive Director/Air Pollution Control Officer also provided written commentary on Rule 9410 to the four major business newspapers in the Valley. In addition, the District presented information about Rule 9410 at 20 meetings of interested employers, industry groups, and service organizations. The District also met with each county and with many of the cities in the Valley, including the 10 largest cities. Understanding that some participants came to more than one meeting, District staff estimates that we addressed approximately 400 individuals at these meetings, representing literally hundreds of thousands of employees covered by the rule.

Attendance at Rule 9410 Meetings

Workshops	202
HAL Business Summits	161
Service organizations	136
Industry groups	38
Cities and counties	66

Economic Analysis and Cost Effectiveness

Phasing in rule requirements over several years helps minimize the financial burden and the burden on staffing resources. The employers can further reduce their compliance costs by taking advantage of the tools and resources that will be provided by the District.

Based on staff's analysis, the annual average compliance cost ranges from \$3,000 to \$9,700 per worksite. Staff also estimates that annual average workload increases will range from 250 to 600 hours per year at average-sized Tier 1 and Tier 2 employers, and

would be distributed over a worksite's entire workforce, not just one employee. For a Tier 2 worksite with 350 employees, for example, Rule 9410 implementation is estimated to account for 0.09% of the total work hours for the worksite. This workload increase includes employee Commute Verification time, which would be widely distributed, as well as time for program administration, which would likely be focused on a fairly small number of employees. Virtually every major industry in the Valley would be affected by Rule 9410, as will many municipalities, school districts, prisons, and hospitals.

The District's cost effectiveness analysis can be found in Appendix C of the Draft Staff Report. For the cost effectiveness analysis, the District compiled one-time costs and recurring costs for every menu option. District staff considered administrative costs, employee labor, materials, and equipment. The District utilized multiple worksites throughout the Valley as examples of worksites with successful trip-reduction measures in place. The District then determined the cost of a feasible ETRIP applicable to the majority of facilities within the Valley. The resulting cost effectiveness for Rule 9410 was estimated to be \$8,000 to \$15,000 per ton of reduced emissions, depending on the size and nature of the employer. The proposed Rule is not only cost effective, but it also requires significantly less capital expenditure per facility than most rules the District has been required to promulgate.

The District's independent contractor compiled the draft socioeconomic analysis report, which can be found in Appendix D of the Staff Report. The socioeconomic analysis shows that a wide range of industries are potentially affected by the proposed rule. The analysis concludes that industries are not significantly impacted by the proposed rule, and small businesses are not disproportionately impacted.

Emission Reduction Analysis

District staff estimated the potential emissions reductions to be achieved from implementing the amendments to Rule 9410, as detailed in Appendix B of the Staff Report. The rule is estimated to achieve about 0.6 tons per day of NOx reductions and 0.6 tons per day of volatile organic compounds (VOC) reductions upon full implementation of the rule in 2014. The rule will also achieve 0.05 tons per day of PM2.5 reductions in 2014.

Environmental Impacts

Pursuant to Section 15061 of the California Environmental Quality Act (CEQA), staff has investigated the possible environmental impacts of the Proposed Rule 9410 and prepared an Initial Study. Based on the lack of evidence to the contrary, staff has concluded that the proposed rule will not have any significant adverse effects on the environment. Staff recommends filing a Notice of Exemption under the provisions of Public Resource Code 15061(b)(3).

Rule Consistency Analysis

Before adopting, amending, or repealing a rule or regulation, the District must identify and evaluate any existing federal rules or existing District rules that apply to the same equipment or source type (California Health and Safety Code Section 40727.2). Elements of review include emission limits, work practices, and reporting/recordkeeping requirements. Through Rule 9410, employers will put measures in place that facilitate ridesharing and alternative transportation, and will annually conduct a verification of their employees' commute modes. There are no existing federal or District regulations that apply to employee commutes. Therefore, adoption of Rule 9410 would not conflict with any existing federal or District requirements.

FISCAL IMPACT:

Due to the broad applicability of Rule 9410 and the District's commitment to minimize the administrative burden on affected employers, rule implementation will require significant effort by the District. Since the District already subscribes to many of the measures prescribed in the rule, we can rely to a great extent on our existing work in producing turnkey programs and tools to affected employers. The early years of implementation, especially, will involve members of the District's Information Technology Services, Human Resources, and Outreach and Communications departments. For the 2009-10 Fiscal Year, the District staff effort will focus on registering applicable employers and beginning the creation of a data-tracking system for applicable employers. The registration effort will require the development of online tools and guidance materials, as well as outreach to business organizations. This year's outreach can be included in current efforts to contact and recruit Healthy Air Living Partners, and the initial development of the database, employer registration tools, and guidance can be addressed within the existing budgeted resources. Therefore, no adjustment to the budget is necessary at this time.

District staff will review and account for Rule 9410 workload demands for each future-year budget and will present appropriate recommendations to your Board, as necessary. In keeping with the District's commitment to the effective and efficient use of public funds, we will do our best to develop and implement this new program with maximum efficiency and streamlining to minimize implementation costs to both the District and the regulated sources.

Attachments:

- Resolution (5 pages)*
- Proposed Rule 9410 (22 pages)*
- Final Draft Staff Report with Appendices for Rule 9410 (156 pages)*
- Initial Study and Notice of Exemption for CEQA (20 pages)*
- Healthy Air Living Partners Guidelines (3 pages)*