IN THE SUPREME COURT OF CALIFORNIA
Case No. S177823

NATIONAL PAINT & COATINGS ASSOCIATION, INC.
Plaintiff and Appellant,
v.
SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT,
Defendant and Respondent.

After a Decision by the Court of Appeal
Fourth Appellate District, Division Three
Case No. G040122

Appeal from the Orange County Superior Court
Case No. 03CC00007
The Honorable Ronald L. Bauer, Judge Presiding

REPLY TO ANSWER TO PETITION FOR REVIEW

Matthew D. Zinn (SBN 214587)
Shute, Mihaly &
Weinberger LLP
396 Hayes Street
San Francisco, California
94102
Telephone: (415) 552-7272
Fax: (415) 552-5816

Daniel P. Selmi (SBN 67481)
919 Albany Street
Los Angeles, CA 90015
Phone (213) 736-1098
Fax (949) 675-9861

Attorneys for Defendant and Respondent South Coast Air Quality Management District

Kurt R. Wiese (SBN 127251)
Barbara B. Baird (SBN 81507)
William B. Wong (SBN 120354)
South Coast Air Quality
Management District
21865 Copley Drive
Diamond Bar, CA 91765-0940
Phone (909) 396-3535
Fax (909) 396-2961

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL STATUTES

STATE STATUTES

STATE RULES

OTHER AUTHORITIES

INTRODUCTION

The authority of an air pollution control agency to require emission reductions lies at the very core of its function. Here, the Court of Appeal's opinion ("Opinion") construes that authority in an extraordinarily narrow manner. If allowed to stand, the Opinion will greatly limit the power of the air pollution agencies throughout the state that face the most daunting pollution problems. Had the Court of Appeal's construction been the law over the past thirty years, much of the significant progress made in combating air pollution over that period could not have occurred.

Despite the importance of the issues presented here, the National Paint and Coatings Association's Answer to the Petition for Review rests its defense of the Opinion almost entirely on an assumption. It assumes that when the Legislature mandated that the South Coast Air Quality Management District impose emission limits on existing pollution sources based on "best available retrofit control technology," or "BARCT," the Legislature intended to limit the stringency of District regulation, rather than to spur the District on to more stringent regulation.

The Association, like the Court of Appeal, never justifies that assumption. It never describes why the BARCT standard is a regulatory ceiling rather than a regulatory floor. It never directly addresses any of the Petition's numerous textual arguments that show that the Legislature intended BARCT to be a mandatory minimum standard, not a maximum. Nor does it provide any evidence of intent from the legislative history to explain why, in a bill otherwise plainly designed to prompt stronger action from the District, the Legislature would newly restrict the District's preexisting broad regulatory authority.

Furthermore, the Association never justifies the Court of Appeal's conclusion that "achievable" means "currently" or "immediately" achievable. As set out in the Opinion, that conclusion lacked support in the statute or plain meaning of the word "achievable," and the Association's Answer does nothing to supply that missing support. That interpretation also contradicts the longstanding principle under the Clean Air Act that air pollution control agencies may adopt "technology-forcing" requirements if needed to meet federal air quality standards. (See *Kennecott Copper Corp. v Costle* (9th Cir. 1978) 572 F.2d 1349, 1356.)

Instead of supporting the Court of Appeal's decision, most of the Answer resigns itself to attempts at undermining the significance of the issues presented in the Petition. In doing so, however, the Association contradicts its earlier briefing in this case. The Association argued below that the BARCT standard required the District to prove that Rule 1113 was achievable for every coating use in the Basin. In doing so, it insisted that this argument—a far narrower issue than those presented in the Petition—was "absolutely of statewide public significance." (Appellant's Reply Brief at 5.) In fact, it took pains to emphasize that significance:

> First, given the wide population area over which SCAQMD asserts jurisdiction, its rules and regulations necessarily impact production, distribution, and use of materials on a statewide basis. Second, a ruling on SCAQMD's authority and the scope of the BARCT requirement affects not only the industries represented by NPCA, but also all other existing sources that emit criteria pollutants within the South Coast Air Basin. The BARCT requirement applies to all regulations adopted by SCAQMD to carry out the South Coast Air Quality Management Plan. *Thus, the implications of this decision will reverberate across all many [*sic*] industries, companies, and individuals in the state.*

(*Ibid.* [emphasis added].)

The District contested the significance of that relatively minor issue below (Respondent's Br. at 29-30) and continues to do so here. (See *infra* Section III.) In any event, the Association cannot simultaneously contend that this narrow issue is "absolutely of statewide significance" but that the much broader questions presented in the Petition are insignificant.

The Opinion presents issues that are both unsettled and "absolutely of statewide significance." They go to the core of the District's ability to respond to the enormous problem of air pollution in the South Coast Air Basin. The Legislature has recognized the "critical air pollution problems" in that Basin and found

> [t]hat, in order to achieve and maintain air quality within the ambient air quality standards, a comprehensive basinwide air quality management plan must be developed and implemented to provide for the rapid abatement of existing emission levels to levels which will result in the achievement and maintenance of the state and federal ambient air quality standards . . . .

(Health & Saf. Code § 40402(b), (e).) To implement this finding, the Legislature gave the District broad authority to require that "rapid abatement" of air pollution. (See §§ 40001, 40440(a), 40702, 41508.)

The Opinion drastically curtails that authority. This Court should grant review to correct the Opinion's significant legal errors and restore the authority that the Legislature delegated to the District to move the Basin toward compliance with state and federal air quality standards.

ARGUMENT

I. The Answer Makes Virtually No Response to the District's Arguments on the Merits.

The Association devotes much of its Answer to summarizing the Court of Appeal's analysis rather than defending it. (See, e.g., Answer at 3-4.) Tellingly, the Association makes almost no attempt to refute the District's arguments regarding the legal flaws in the Opinion.

A. BARCT Is a Floor, Not a Ceiling.

The Answer simply ignores the compelling evidence of legislative intent in the Petition that BARCT is not the most stringent standard that the District may adopt—in other words, that BARCT is a floor, not a ceiling, for the District's regulation of pollution from existing sources. (Petition at 32-40.) The Association

- Ignores the text and structure of section 40440(b), which includes the BARCT provision (*id.* at 35-36);

- Ignores section 41508, which expressly allows the District to adopt standards more stringent than those established by state law (*id.* at 36);

- Ignores the uncodified 1992 statement of legislative intent indicating that a nearly identical BARCT mandate was "intended to establish [a] minimum requirement[] for . . . air quality management districts" (*id.* at 37-38);

- Ignores the District's explanation that the statutory provisions relied on by the Court of Appeal are inapplicable and irrelevant to the meaning of BARCT (*id.* at 41-46); and

- Largely ignores the legislative history, which plainly shows that the Legislature enacted section 40440(b) to prompt stronger regulatory effort from the District, not to curtail the District's already-existing regulatory authority, which made no reference to BARCT. (*Id.* at 27-30, 39-40.)

Instead, the Association briefly argues, without support, that BARCT must be a regulatory ceiling because its definition refers to the "*maximum* degree of [emission] reduction achievable." (Answer at 2 [emphasis added] [citing § 40406].) But the Association quotes only part of the BARCT definition. BARCT is "an emission limitation that is based on the maximum degree of reduction achievable, *taking into account environmental, energy, and economic impacts by each class or category of source*." (§ 40406 [emphasis added].) The italicized clause, which the Association omits, demonstrates that a BARCT

standard does not necessarily require the absolute maximum reduction achievable. Rather, it may require only the maximum reduction that can be achieved while also accommodating the enumerated factors.

In fact, elsewhere in its Answer, the Association concedes that BARCT is not the most stringent possible emission limitation. It describes the "best available control technology," or "BACT," standard as being "much more stringent" than BARCT. (Answer at 5.) (BACT applies to new rather than existing sources. (§ 40440(b)(1).)) In light of that concession, there is no incongruity in the District's argument that BARCT is the minimum, not maximum, standard applicable to existing pollution sources.

B. "Achievable" Does Not Mean "Currently Achievable."

The Opinion construed "achievable" to mean "currently" or "immediately" achievable. (Slip Op. at 21-22.) As the District explained in the Petition, no basis exists for attaching this temporal limitation to the plain meaning of "achievable." (Petition at 18-25.) The Court of Appeal's own analysis does not support that limitation.

The Association's Answer does nothing to supply that missing support. Instead, it reiterates the Court of Appeal's reliance on the word "available" in the phrase "best available retrofit control technology." (Answer at 3.) Yet as the Petition describes, the court's focus on the word "available" was improper, because it is part of an expressly defined phrase, and that definition supplants the ordinary meaning of the phrase. (Petition at 21; see also *Witt Home Ranch, Inc. v. County of Sonoma* (2008) 165 Cal.App.4th 543, 559 ["The law of statutory interpretation instructs us to apply the usual and ordinary meaning of words unless a definition is provided within the statute itself. *Internal definitions are controlling*." (emphasis added)].) If the Legislature had meant to use the ordinary meaning of the component words in "best available retrofit control technology," it would not have bothered to define the phrase. Likewise, in defining that phrase, if the Legislature meant to limit the meaning of "achievable" to "currently or immediately achievable," it could have done so by including those modifiers. In short, the Court of Appeal's construction of the key word "achievable" substitutes its own definition for the Legislature's.

The Association points to the court's discussion of *Western States Petroleum Assn. v. South Coast Air Quality Management Dist.* (2006) 136 Cal.App.4th 1012, and *Security Environmental Systems, Inc. v. South Coast Air Quality Management Dist.* (1991) 229 Cal.App.3d 110. (Answer at 4.) But neither case construed the word "achievable." The *Western States Petroleum* case held that it did not need to decide whether the District must show its rules to be achievable, because even if it were required to do so, the record showed that the challenged regulation was in fact currently achievable. But the court never suggested that such evidence was required. (136 Cal.App.4th at 1019 & fn. 13.)

The *Security Environmental* case involved the distinct definition of BACT for new sources, not BARCT for existing sources, and is therefore inapplicable.[1] (229 Cal.App.3d at 131-32.) As the Petition explained, the BACT standard is

---

[1] A confusing "*Id.*" in the Answer makes it appear that *Security Environmental* held that "'best' and 'available' . . . [mean] something that exists – rather than something that *might* one day be expected *to* exist." (Answer at 4.) In fact, that is a quotation from the Opinion in this case, not from *Security Environmental.* (See Slip Op. at 16.)

incorporated into permits that authorize immediate construction of a new pollution source. Accordingly, the standard must be achievable at the time the District issues the permit allowing the source to be constructed. By contrast, BARCT is implemented through generally applicable rules that allow long lead times for sources to reach compliance. (Petition at 42-43.) The Answer has no response to these points.

II. The Scope of the District's Regulatory Authority Is an Unsettled and Important Question of Law.

A. The Question Is Unsettled.

The Association argues that the question whether the District may adopt regulations that are not immediately achievable is settled. (Answer at 5-6.) Yet until the Court of Appeal rendered its decision here, no court had addressed the subject. Moreover, two courts faced with the issue had expressly declined to decide it, because they found that the challenged rules were in fact presently achievable. (See *Western States Petroleum, supra,* 136 Cal.App.4th at 1019 & fn. 13; *National Paint & Coatings Assn. v. South Coast Air Quality Management Dist.* (C.D.Cal. 2007) 485 F.Supp.2d 1153, 1157.) The issue is therefore far from settled.

The District does not contend that this Court's review is necessary to resolve a split of authority among the courts of appeal. Rather, it is necessary to resolve serious legal errors, with serious practical consequences, in the only judicial opinion to have addressed the issues presented. Rule 8.500(b)(1) of the California Rules of Court provides that review is appropriate "[w]hen necessary to secure uniformity of decision *or* to settle an important question of law." (Emphasis added.) Use of the disjunctive means that review is appropriate where either there is a conflict in the decisions or important legal questions remain unsettled. The latter is true here.

B. The Question Is Important.

The Association also attempts to downplay the practical significance of the Opinion for pollution control efforts and public health in the state. (Answer at 6-8.) But the Answer does nothing to dispose of the numerous fundamental problems that the Opinion will cause for the South Coast District and other districts in the state.

First, the Opinion's interpretation of BARCT would constrain the districts that most need broad authority to adopt stringent regulations, because BARCT applies only to the

districts with the dirtiest air. (Petition at 5-6.) The Association labels this argument "frivolous," (Answer at 6), but on the contrary, it is undeniable. The District does not argue that districts with no air pollution problems (if such districts exist) could adopt technology-forcing regulations. Rather, the paradox created by the Opinion affects the numerous districts that have air much cleaner than the Basin's but that still face air pollution problems. Under the Opinion's reasoning, these districts could respond to those problems by adopting regulations that are supposedly outside the authority of districts with dirtier air, such as the South Coast District. The Legislature could not have intended that backward result.

Second, if the District may only require emission reductions immediately achievable with existing or "off the rack" technology, it will be a hostage to regulated industries' voluntary decisions to develop—or refuse to develop—that technology. (Petition at 6-7.) In *Sherwin-Williams Co. v. South Coast Air Quality Management Dist.* (2001) 86 Cal.App.4th 1258, the court of appeal declared that "appellants cannot convince us that, left to itself, industry will take steps to safeguard the public health and public welfare by using less polluting but possibly more expensive technology."

(*Id.* at 1280.) The Association's Answer disagrees with this common-sense statement, but does nothing to rebut it. (Answer at 6.)

On the contrary, the paint industry's litigiousness and recalcitrance proves the point. Instead of striving to innovate on its own and voluntarily reduce emissions, as the Association suggests it would, the industry has challenged at every turn efforts by the District and other agencies to regulate coating emissions. As the court of appeal observed in *Sherwin-Williams, supra,* 86 Cal.App.4th at 1263-64, "[T]he paint industry has extensively litigated attempts by the SCAQMD and other agencies to regulate harmful effects of paints on the environment . . . ."[2]

---

[2] See also, e.g., *Natl. Paint & Coatings Assn. v. State* (1997) 58 Cal.App.4th 753; *Dunn-Edwards Corp. v. South Coast Air Quality Management Dist.* (1993) 19 Cal.App.4th 536; *Dunn-Edwards Corp. v. South Coast Air Quality Management Dist.* (1993) 19 Cal.App.4th 519; *Dunn-Edwards Corp. v. Bay Area Air Quality Management Dist.* (1992) 9 Cal.App.4th 644; *Natl. Paint, supra,* 485 F.Supp.2d at 1153. And these are only the cases that resulted in published appellate opinions.

Third, the Association attempts to evade the Opinion's implications for regulations like the District's important RECLAIM rule, which relied on then-unknown future pollution control technology to meet the rule's standards. (Answer at 7.) The Association asserts, forebodingly, that the impact of the Opinion on rules like RECLAIM "is a question for another day." (*Ibid.*) Here too, the Association does not attempt to square the Opinion with the opposite result in the case upholding the RECLAIM rule, *Alliance of Small Emitters / Metals Industry v. South Coast Air Quality Management Dist.* (1997) 60 Cal.App.4th 55. (See *id.* at 59 [finding that the RECLAIM rule "anticipated significant improvements in existing technologies or completely new approaches" that were entirely unknown when the District adopted the rule].)

Finally, the Opinion could deprive the District of adequate authority to require emission reductions necessary to attain the federal ambient air quality standards. (Petition at 8-10.) The Association's only response is to note that, technically speaking, this would not be "a conflict with the [federal Clean Air] Act." (Answer at 8.) Regardless, it would invalidate EPA's approval of the Basin's portion of the "state implementation plan" adopted to

show the Basin's path to compliance with the federal air quality standards and require EPA to impose a "federal implementation plan" on the region. (*Ibid.*; see also 42 U.S.C. §§ 7410(c)(1), 7509.)

The Association's response only confirms the District's point: a federal plan would have serious consequences for the state, and undoubtedly for the paint industry, as it would "rescind[] state authority to make the many sensitive technical and political choices that a pollution control regime demands." (*Natural Resources Defense Council, Inc. v. Browner* (D.C. Cir. 1995) 57 F.3d 1122, 1124; see also *Coalition for Clean Air v. Southern California Edison Co.* (9th Cir. 1992) 971 F.2d 219, 223 [quoting a former EPA administrator as stating that the imposition of a federal plan in the South Coast Basin would require "across-the-board, draconian measures [that would] devastat[e] the country's largest industrial area"].) Moreover, EPA would impose the federal plan in addition to, not instead of, the other sanctions against the state referred to in the Petition, including a cutoff of federal transportation funding. (Petition at 10 [citing 42 U.S.C. §§ 7410(m), 7509].) Thus, the Association's argument shows only that the potential consequences for the

Basin and the state created by the Opinion are more severe than the Petition suggested.

III. The Court Should Reject the Association's Proposed Additional Issue for Review.

The Association argues that the Court should expand the issues presented for review if it grants the Petition. It urges the Court to review and overturn the Court of Appeal's conclusion that the District need not prove that the Rule is "achievable" for all coatings within each regulated coating category. (Answer at 9-13.) The Court should reject this proposal.

The Association's proposed issue is a slight rephrasing of an argument that it raised and the Court of Appeal rejected below. The Association has argued that the District must show the Rule is achievable for every coating use or application in the Basin. (Slip Op. at 16-17; see also *Natl. Paint, supra,* 485 F.Supp.2d at 1157-58 [rejecting the Association's argument].) Instead of "uses" or "applications" of coatings, the Association now refers merely to "coatings" (Answer at 9-10), but the change is meaningless. For example, the Association suggests that the District was obligated to demonstrate that its emission limit for "industrial maintenance" coatings is achievable for every coating

that qualifies for that category, such as coatings for "oil and gas production, refineries, marine, pulp and paper mills, etc." (*Id.* at 10.)

These may be characterized equally as different "coatings" or different coating "uses." Either way, under the Association's theory, "no paint or coating could *ever* be limited in emissions, because one could always dream up a heavy duty application for which the limit would be, as the doctors say, counterindicated." (Slip Op. at 17 [emphasis in original].) The potential variety of different coatings for different applications is essentially "infinite." (*Ibid.*; accord *Natl. Paint*, *supra,* 485 F.Supp.2d at 1158.) For instance, although the Association now suggests that "chemical storage tank coatings" might represent a single "coating" (Answer at 10), nothing would stop the Association from asserting in a future rulemaking for chemical storage tank coatings that the District had not demonstrated that its rule is achievable for all coatings for all varieties of chemical storage tanks.

Indeed, the Association has repeatedly emphasized the numerous "unique" requirements that individual coatings may serve. (See, e.g., Reporter's Transcript at 34 ["specific

applications and their unique performance characteristics"]; see also *id.* at 30 ["The floor at your house is not like the floor outside the courtroom. They all have unique characteristics."]; Appellant's Opening Br. at 36 ["users of coatings with unique requirements"]; *id.* at 37 ["[s]ophisticated users [of] coatings with unique requirements"].) The variety of potential individual coatings is virtually limitless. (E.g., Administrative Record ("AR") 4:886-87 [coating manufacturer describing a coating for microwave antennas and "a swimming pool coating for use . . . in animal enclosures"].) In enacting BARCT, the Legislature could not have meant to paralyze the District by requiring it to prove specifically that its coatings regulations are achievable for animal enclosure swimming pools.[3]

The Association's theory also clashes with the definition of BARCT, which requires the District to establish standards for a

---

[3] The Association may always present evidence that a particular use or coating demands a higher volatile organic compound limit. The District investigates such claims and has created new subcategories of existing categories where warranted. (See, e.g., AR 5:1290 [recycled coatings category created at industry request]; 8:2085-86 [specialty primers category created at the Association's request].)

"class or category of source." A "class or category" connotes a grouping of multiple items. (See *The Compact Oxford English Dictionary* (2d ed. 2002), at 264 [defining class as "[a] number of individuals (persons or things) possessing common attributes, and grouped together under a general or 'class' name; a kind, sort, division"]; *id.* at 223 [defining category as "[a] term . . . given to certain general classes of terms, things, or notions"].) Individual coatings are individual sources; they are not groupings of multiple items and cannot be "class[es] or categor[ies] of source[s]." (See *Natl. Paint, supra,* 485 F.Supp.2d at 1158.)

Nor does the Association's potpourri of cases, almost all of which come from outside California and other regulatory regimes, help its cause. The only case it cites that applied the BARCT standard, *Western States Petroleum, supra,* does not support its position. The court did not hold that the District was required to demonstrate that the challenged regulation was achievable at all of the regulated refineries, though it did find that the regulation was *in fact* achievable at all of them. (136 Cal.App.4th at 1019-21.)

The remaining cases all involve regulatory programs under different statutes that raise their own interpretive questions.

The cases decided under the federal Occupational Safety and Health Act (29 U.S.C. § 651 *et seq.*) ("OSH Act"), for example, conclude that a regulator cannot aggregate disparate *industries* within the ambit of a single regulation. (Answer at 12-13 [citing *AFL-CIO v. OSHA* (11th Cir. 1992) 965 F.2d 962, 981-82, and *Color Pigments Manufacturers Assn. v. OSHA* (11th Cir. 1994) 16 F.3d 1157, 1161].) It is unclear why the OSH Act cases' industry-by-industry approach has any relevance whatsoever to the regulatory categories of paints and other coatings adopted by the District.

In any event, the OSH Act cases do not require the evidence of uniform achievability that the Association demands of the District. The seminal case on the feasibility of OSH Act regulations, *United Steelworkers of America, AFL-CIO-CLC v. Marshall* (D.C. Cir. 1980) 647 F.2d 1189, held that the feasibility standard "in no way ensures that all companies at all times and in all jobs can meet OSHA's demands." (*Id.* at 1272; see also *id.* at 1264 [OSH regulation may be feasible even if "only the most technologically advanced plants in an industry have been able to

achieve [it]—even if only in some of their operations some of the time"].)[4]

Finally, the Association's proposed issue is not appropriate for review because it does not present an important unresolved legal question. Whether the District must separately regulate "chemical storage tank" coatings and "bridge coatings" and "marine" coatings and "pulp and paper mill" coatings cannot be determined as a matter of law. The *legal* question is what standard of review a court should apply to a district's decision to categorize sources, and on that score, the parties appear to be in

---

[4] To the extent they are relevant at all, the OSH Act cases also undercut the Court of Appeal's holding that District rules must be immediately achievable:

> Congress meant the [OSH Act] to be "technology-forcing." . . . *[U]nder this view OSHA can also force industry to develop and diffuse new technology. At least where the agency gives industry a reasonable time to develop new technology, OSHA is not bound to the technological status quo.*

(*United Steelworkers, supra,* 647 F.2d at 1264 [citations omitted; emphasis added]; accord *American Iron & Steel Institute v. Occupational Safety & Health Admin.* (3d Cir. 1978) 577 F.2d 825, 838 ["[T]he Secretary can impose a standard which requires an employer to implement technology 'looming on today's horizon,' and is not limited to issuing a standard solely based upon technology that is fully developed today."].)

agreement: "arbitrary and capricious." (Answer at 10; see also *Ramirez v. Yosemite Water Co.* (1999) 20 Cal.4th 785, 799-800 [citing *Moore v. California State Bd. of Accountancy* (1992) 2 Cal.4th 999]; *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 17-18 (Mosk, J., concurring).)

CONCLUSION

For the reasons stated above and in the Petition, the District asks that the Court grant the Petition to rectify the Court of Appeal's serious legal errors. Left intact, the Opinion will substantially impair the District's ability, and that of other districts with poor air quality, to carry out its legislative mandate to attain compliance with the state and federal air quality standards and protect public health. The issues in the Petition present precisely the sort of significant legal questions that justify this Court's review under Rule 8.500(b)(1) of the California Rules of Court.

DATED: Dec. 17, 2009 SHUTE, MIHALY & WEINBERGER LLP
DANIEL P. SELMI
KURT WIESE, DISTRICT COUNSEL

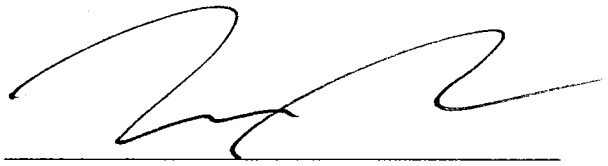
By: _____
MATTHEW D. ZINN
Attorneys for Defendant and Respondent
SOUTH COAST AIR QUALITY
MANAGEMENT DISTRICT

CERTIFICATE OF WORD COUNT

I certify that this petition contains 4,162 words, exclusive of this certificate and the tables of contents and authorities, according to the word count function of the word processing program used to produce the petition. The number of words in this petition therefore complies with the requirements of Rule 8.504(d)(1) of the California Rules of Court.

DATED: Dec. 17, 2009

SHUTE, MIHALY &
WEINBERGER LLP
DANIEL P. SELMI
KURT WIESE, DISTRICT COUNSEL

By: 

MATTHEW D. ZINN

Attorneys for Defendant and
Respondent
SOUTH COAST AIR QUALITY
MANAGEMENT DISTRICT

PROOF OF SERVICE

National Paint & Coatings Association, Inc. v. South Coast Air Quality Management District; Supreme Court of California

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the City and County of San Francisco, State of California. My business address is 396 Hayes Street, San Francisco, California 94102.

On December 17, 2009, I served true copies of the following document(s) described as:

REPLY TO ANSWER TO PETITION FOR REVIEW

on the parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Shute, Mihaly & Weinberger LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 17, 2009, at San Francisco, California.

Natalia Thurston

Natalia Thurston

SERVICE LIST
National Paint & Coatings Association, Inc. v. South Coast Air Quality Management District
Supreme Court of California

Jeffrey B. Margulies
William L. Troutman
Fulbright & Jaworski, LLP
555 South Flower Street, 41st Floor
Los Angeles, CA 90071
Tel: (213) 892-9200

Attorneys for Plaintiff and Respondent National Paint & Coatings Association, Inc.

Clerk of the Court
California Court of Appeal
Fourth Appellate District, Division Three
601 W. Santa Ana Blvd.
Santa Ana, California 92701
Tel: (714) 571-2600
(1 copy)

Clerk of the Court
Superior Court of Orange County
Civil Complex Center
751 West Santa Ana Blvd.
Santa Ana, CA 92701
Tel: (714) 568-4700
(1 copy)

P:\SCAQM\Paint\Appeal\NET008 (proof of service 12.17.09).doc