PROPOSED

State of California
AIR RESOURCES BOARD

CONTROL MEASURE FOR OCEAN-GOING VESSELS AT BERTH

Resolution 20-22

August 27, 2020

Agenda Item No.: 20-08-1

WHEREAS, sections 39600 and 39601 of the Health and Safety Code direct the California Air Resources Board (CARB or Board) to adopt standards, rules, and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, sections 39658, 39659 and 39666 of the Health and Safety Code authorize the Board to establish airborne toxic control measures (ATCM) for substances identified as toxic air contaminants;

WHEREAS, section 43013 of the Health and Safety Code authorizes the Board to adopt standards and regulations to control criteria pollutants for off-road or nonvehicle engine categories, including marine vessels to the extent permitted by federal law; and to act as expeditiously as is feasible to reduce nitrogen oxide emissions from marine vessels;

WHEREAS, section 41511 of the Health and Safety Code gives CARB the authority to adopt rules and regulations in carrying out its duties that require the owner or the operator of any air pollution emission source to take such action as it may determine to be reasonable for the determination of the amount of such emission from such source;

WHEREAS, section 38560 of the Health and Safety Code directs CARB to adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective greenhouse gas (GHG) emissions reductions from sources or categories of sources;

WHEREAS, section 38562 of the Health and Safety Code requires CARB to adopt GHG emissions limits and emissions reduction measures by regulation to achieve the maximum technologically feasible and cost-effective reductions in GHG emissions in furtherance of achieving the statewide GHG emissions limit;

WHEREAS, section 39730.5 of the Health and Safety Code requires CARB to begin implementing the comprehensive short-lived climate pollutant strategy to reduce statewide anthropogenic black carbon emissions by 50 percent below 2013 levels by 2030;

WHEREAS, the 2016 Sustainable Freight Action Plan identified strengthening the Airborne Toxic Control Measure for Auxiliary Diesel Engines Operated on Ocean-Going Vessels At-Berth in a California Port (2007 At-Berth ATCM), as a State agency action to advance the objectives of Executive Order B-32-15;

WHEREAS, the 2016 State Strategy for the State Implementation Plan (SIP Strategy) included a CARB measure to strengthen the emission controls from vessels at berth by including additional vessel fleets, types, and operations to achieve emission reductions needed for attainment;

WHEREAS, the October 2018 Community Air Protection Blueprint identifies amendments to the At Berth regulation as a near term action to reduce emissions and exposure in disproportionately burdened communities throughout the State.

WHEREAS, ports provide direct and substantial contributions to California commerce;

WHEREAS, during the March 23, 2017, Board Meeting, the Board adopted Resolutions 17-7 and 17-8 (and addenda thereto), adopting the 2016 State Strategy for the SIP, and the 2016 Air Quality Management Plan for Ozone and PM2.5 in the South Coast Air Basin and the Coachella Valley, respectively;

WHEREAS, the addenda to Board Resolutions 17-7 and 17-8 direct CARB staff to develop a regulation that would strengthen the 2007 At-Berth ATCM and provide further emission reductions to increase public health benefits;

WHEREAS, staff has proposed the Control Measure for Ocean-Going Vessels At Berth (Regulation), as set forth in Appendix A to the Initial Statement of Reasons (ISOR) released to the public on October 15, 2019;

WHEREAS, the Regulation would reduce emissions in communities heavily burdened by cumulative air pollution impacts, as required by Assembly Bill 617 (Stats. 2017, Ch. 136);

WHEREAS, the Regulation is designed to achieve added public health and air quality benefits that result from emissions reductions of oxides of nitrogen (NOx), particulate matter 2.5 (PM2.5), reactive organic gas (ROG), GHG emissions, black carbon, diesel particulate matter (DPM) and other toxic air contaminants, beyond those realized by the 2007 At-Berth ATCM;

WHEREAS, CARB's regulatory program that involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans has been certified by the

Secretary for Natural Resources under Public Resources Code section 21080.5 of the California Environmental Quality Act (CEQA; California Code of Regulations, title 14, section 15251(d)), and CARB conducts its CEQA review according to this certified program (California Code of Regulations, title 17, sections 60000-60007);

WHEREAS, CARB prepared a draft Environmental Analysis (Draft EA) under its certified regulatory program for the Regulation and circulated it as Appendix D of the ISOR for public comment for at least 45 days from October 15, 2019, through December 9, 2019;

WHEREAS, the Draft EA concluded that implementation of the Regulation has the potential to result in: less than significant impacts, or no impacts, to energy demand, land use, air quality, GHGs, population, employment and housing, public services, and recreation; and potentially significant impacts to aesthetics, agriculture and forest resources, air quality (construction-related emissions), biological resources, cultural resources and tribal resources, geology and soils, hazards and hazardous materials, hydrology and water quality, mineral resources, noise and vibration, transportation and traffic, and utilities and service systems. The potentially significant and unavoidable adverse impacts are primarily related to short-term, construction-related activities.

WHEREAS, on December 5, 2019, the Board conducted a public hearing on the proposed Control Measure for Ocean-Going Vessels At Berth and the Draft EA prepared for the proposal;

WHEREAS, following the public hearing, the Board adopted Resolution 19-28 directing the Executive Officer to consider any additional conforming modifications that are appropriate, and make them available for public comment, with any additional supporting documents and information, for a period of at least 15 days. The Executive Officer was further directed to consider written comments submitted during the public review period and make any additional appropriate conforming modifications available for public comment for at least 15 days, explore innovative concepts where equivalent or greater community benefits would be achieved, evaluate all comments received during the public comment periods, including comments on the Draft EA, and prepare written responses to EA comments as required by CARB's certified regulations at California Code of Regulations, title 17, sections 60000-60007 and Government Code section 11346.9(a). The Executive Officer was directed to present to the Board, at a subsequently scheduled public hearing, staff's written responses to any comments on the Draft EA, along with the Final EA, for consideration for certification, and the finalized regulation for consideration for adoption;

WHEREAS, following the Board hearing on December 5, 2019, the modified regulatory language and supporting documentation were circulated for a 36-day public comment period, with the changes to the originally proposed text clearly indicated, according to provisions of California Code of Regulations, title 1, section 44

and Government Code sections 11340.85 and 11346.8, from March 26, 2020, to May 1, 2020;

WHEREAS, staff presented to the Board on June 25, 2020 at an informational hearing, an update on the status of the regulation development in light of the current economic conditions, and received guidance on the next steps for finalizing the Regulation;

WHEREAS, following the informational Board hearing, a second version of modified regulatory language and supporting documentation were circulated for a 15-day public comment period, with the changes to the regulatory language text clearly indicated, according to provisions of California Code of Regulations, title 1, section 44 and Government Code section 11340.85, from July 10, 2020, to July 27, 2020;

WHEREAS, staff reviewed written comments received on the Draft EA and prepared written responses to those comments in a document entitled *Response to Comments on the Environmental Analysis Prepared for the Control Measure For Ocean-Going Vessels At Berth* (Response to EA Comments);

WHEREAS, on August 25, 2020**,** staff posted on the rulemaking page the Final EA, which includes minor revisions; and on August 25, 2020, staff posted on the rulemaking page the Response to EA comments;

WHEREAS, prior to the duly noticed public hearing held on August 27, 2020, staff presented the Final EA and the Response to EA Comments, as released to the public and posted on the rulemaking page on August 25, 2020, to the Board for consideration;

WHEREAS, a public hearing and other administrative proceedings have been held according to the provisions of Chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code; and

WHEREAS, the Board finds that:

1. The Regulated California Waters, which include California ports and independent marine terminals, feature meteorological, wind, and atmospheric conditions peculiar to the local waters of California, and such conditions make it likely that emissions of DPM, PM2.5, ROG, and NOx occurring within these waters and ports are transported to coastal communities and adversely affect human health and welfare and the environment in such communities, thereby calling for special precautions to reduce these emissions;

2. The emissions from diesel auxiliary engines used on ocean-going vessels and boilers used on tanker vessels with steam driven boilers while at berth

contribute to regional air quality problems and to potential risk of cancer and non-cancer health effects for residents living in communities near California's major ports and independent marine terminals;

3. Upon implementation, the Regulation approved herein would reduce emissions of DPM, ROG, GHG and NOx from diesel auxiliary engines used on ocean-going vessels and PM2.5, ROG, and NOx from boilers on tanker vessels with steam driven pumps while at berth and will reduce emissions of carbon dioxide, a GHG;

4. The Regulation approved herein will be consistent with CARB's environmental justice policy by reducing the health risks from DPM in all communities near major California ports and independent marine terminals as well as further inland, including those with low-income and minority populations regardless of location;

5. The Regulation approved herein will conform to the requirements of the SIP Strategy;

WHEREAS, in consideration of the ISOR, written comments, and public testimony, the Board finds that:

1. In accordance with Health and Safety Code section 43013(b), the in-use operational requirements and other provisions of the Regulation approved herein are necessary, cost-effective, and technologically feasible for diesel auxiliary engines used on ocean-going vessels and boilers used on tanker vessels with steam driven pumps while at berth within the time provided for compliance;

2. The emissions from diesel auxiliary engines used on ocean-going vessels and auxiliary boilers used on tankers with steam driven pumps while at berth contribute to regional air quality problems and to potential risk of cancer and non-cancer health effects for residents living in communities near California's major ports and independent marine terminals;

3. Upon implementation, the Regulation approved herein would reduce emissions of DPM, NOx, ROG, and GHG from diesel auxiliary engines used on ocean-going vessels and PM2.5, NOx, ROG, and GHG from boilers used on tanker vessels with steam driven pumps while at berth and will reduce emissions of carbon dioxide, a greenhouse gas;

4. The compliance schedule contained within the Regulation approved herein is necessary, cost-effective, and technologically feasible;

5. Without the Regulation approved herein, statewide at berth baseline emissions of NOx, PM2.5, DPM, and ROG from diesel auxiliary engines used on ocean-going vessels and boilers on tankers with steam driven pumps while at berth, are expected to be 12.37 tons per day (TPD), 0.387 TPD, 0.183 TPD, and 0.68 TPD, respectively, in 2032;

6. The Regulation approved herein would reduce emissions of NOx, PM2.5, DPM, and ROG statewide by about 5.4 TPD, 0.14 TPD, 0.094 TPD, and 0.30 TPD, respectively, in 2032;

7. The Regulation approved herein would reduce emissions of carbon dioxide equivalent (CO2e) by about 44,000 metric tons in 2032;

8. The reduction of NOx emissions resulting from the Regulation approved herein would also reduce the formation of secondarily-formed PM in the atmosphere;

9. The reduction in ambient DPM levels and the secondary formation of PM resulting from the Regulation approved herein will likely prevent an estimated 240 premature deaths by 2032, with a total valuation pursuant to standard U.S. Environmental Protection Agency methodology of $2.32 billion for avoiding both morbidity and various other non-cancer health effects;

10. The added costs of the Regulation approved herein have been analyzed as required by California law, and the analysis of these impacts, as set forth in the Staff Report and revised in the Supplemental 15 Day Notices, indicates that the total cost we expect the affected industry will expend in response to the Regulation will be about $2.23 billion through 2032;

11. The reporting requirements applicable to businesses in the Regulation approved herein are necessary for the health, safety, and welfare of the people of the State;

12. The benefits of the Regulation approved herein to public health and welfare and the environment outweigh the costs of compliance, implementation, and enforcement;

13. The implementation of shore power infrastructure facilitate additional skilled human operations in and around the port to support zero emission technologies including vessel plug-ins, as well as maintenance, and repair of electrical infrastructure and shore power equipment;

WHEREAS, the Board finds that:

The proposed regulation meets the statutory requirements identified in sections 39600, 39601, 39658, 39659, 39666, 43013, 41511, 38560, 38562, and 39730.5 of the Health and Safety Code;

The Regulation was developed in an open public process, in consultation with affected parties, through numerous public workshops, individual meetings, and other outreach efforts, and these efforts are expected to continue;

No reasonable alternatives to the Regulation considered to date, or that have otherwise been identified and brought to the attention of CARB, would be more effective at carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected entities than the Regulation; and

The Regulation is consistent with CARB's environmental justice policies and do not disproportionately impact people of any race, culture, or income.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby certifies that the Final EA, including the Response to EA Comments, as released to the public and posted on the rulemaking page on August 25, 2020, was completed in compliance with CARB's certified regulatory program to meet the requirements of CEQA, reflects the agency's independent judgment and analysis, and was presented to the Board whose members reviewed and considered the information therein before taking action to approve the Regulation.

BE IT FURTHER RESOLVED that in consideration of the Final EA, the Response to EA Comments, and the entirety of the record, the Board adopts the CEQA Findings and Statement of Overriding Considerations set forth in Attachment A to this resolution.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby adopts amendments to section 2299.3, Title 13 and section 93118.3, Title 17 California Code of Regulations, and adopts sections 93130 – 93130.22, Title 17, California Code of Regulations, as released to the public and posted on the rulemaking page on August 25, 2020.

BE IT FURTHER RESOLVED that the adopted regulatory text may be further revised with non-substantial or grammatical changes, which will be added to the rulemaking record and indicated as such.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to finalize the Final Statement of Reasons, submit the completed rulemaking package to the Office

of Administrative Law, and transmit the Notice of Decision with the Response to EA Comments to the Secretary of the Natural Resources Agency for posting.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to periodically review the test methods, which are incorporated by reference in the regulation adopted herein, to determine if modifications to the test methods are warranted.

BE IT FURTHER RESOLVED that, pursuant to sections 39515, 39516, 39600, and 39601 of the Health and Safety Code, if modifications to the test methods are warranted, the Board expressly delegates to the Executive Officer the authority to: (a) adopt regulatory amendments to the test methods, set forth in section 93110.5(g), title 17, CCR; (b) conduct public hearings, if necessary; and (c) take other appropriate actions to make such amendments.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to conduct outreach efforts as soon as possible with affected industry to ensure that vessel owners or operators, terminal operators, ports, and CARB Approved Emission Control Strategy operators, are aware of the requirements of the regulation.

BE IT FURTHER RESOLVED that the Board supports human operated zero emission equipment and infrastructure.

BE IT FURTHER RESOLVED that the Board directs the staff to assess the progress made in deploying control technologies for use with tanker and roll on roll off vessels, including assessing data and information received from external stakeholders, to review the potential feasibility of control technologies for use with bulk vessels, general cargo vessels, and vessels at anchor and to publish the findings in a report by December 1, 2022, as specified by the Regulation.

BE IT FURTHER RESOLVED that the Board directs staff to engage the local community group or local AB 617 community steering committee regarding an applicant's proposed project to ensure these adjacent communities are informed and involved in any proposed innovative concept's public comment period prior to an applicant's approval.

BE IT FURTHER RESOLVED that the Board directs staff to continue to engage the articulated tug barge (ATB) industry to determine the best options for cost-effective emission reductions that recognize the unique nature of ATBs as CARB updates the commercial harbor craft regulation.

BE IT FURTHER RESOLVED that the Board directs the staff to monitor the implementation of the regulation for all regulated vessel types, including progress updates for infrastructure and vessel activity, to report back to the Board with periodic updates, annually or as needed, and to propose amendments to the regulation for the

Board's consideration when warranted to resolve any implementation problems that may arise.

BE IT FURTHER RESOLVED that the Board hereby determines that the regulations adopted herein will not cause California off-road engine emission standards, in the aggregate, to be less protective of public health and welfare than applicable federal standards.

BE IT FURTHER RESOLVED that, to the extent necessary, the Executive Officer shall, upon adoption, forward the regulations to the Environmental Protection Agency with a request for an authorization or confirmation that the regulations are within the scope of an existing authorization pursuant to section 209(e)(2)(A) of the Clean Air Act, as appropriate.

Resolution 20-22

August 27, 2020

Identification of Attachments to the Board Resolution

Attachment A: CEQA Findings and Statement of Overriding Considerations