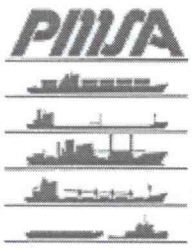

December 3, 2007

Clerk of the Board
California Air Resources Board
1001 I Street, 23rd Floor
Sacramento, CA 95814

SUBMITTAL OF COMMENTS

Re: Proposed Regulations to Reduce Emissions from Diesel Auxiliary Engines on Ocean-Going Vessels While At-Berth at a California Port

The Pacific Merchant Shipping Association (PMSA), a maritime trade association representing marine terminal operators and ocean carriers operating at all of California's public ports, appreciates the work done by California Air Resources Board (CARB) staff in the development of this proposed regulation. We have worked closely with staff throughout the process and believe the present version of the proposed regulation is much improved from previous drafts. Nevertheless, while PMSA and its members are supportive of the goals of the proposed regulation, several outstanding issues of serious concern remain problematic for the maritime industry and preclude us from supporting the proposed regulation currently under consideration by the Board.

As the Board is well aware, industry's support of the goals of the proposed regulation is evidenced by the current high level of voluntary participation by several ocean carriers in equipping vessels for connections with shorepower. In fact, to our knowledge, PMSA member company vessels operating in the California trade are significantly ahead of every other private fleet currently sailing anywhere in the world with regard to their capability, capacity and actual use of shorepower. Indeed, we have observed the capacity of oceangoing vessels to utilize shorepower has generally outpaced the development and availability of the shore-side infrastructure necessary to connect to shorepower equipped vessels. This is not surprising given the diversity of economic variables facing our member companies, both marine terminals and ocean carriers alike, and the current lack of international standards governing the modification of vessels for shorepower, requirements for new vessel construction, and the provision of shorepower to vessels.

Within the State's ports, the creativity and experimentation with various forms of shorepower is beginning to bear fruit for those who have been on the leading edge of this new investment. Furthermore, in addition to various shorepower projects and agreements, our members who are not similarly situated to become an early adopter of these new shorepower technologies are nevertheless actively developing alternative measures of reducing emissions from vessels while at berth and while underway that go beyond existing regulatory requirements.

It is in this context that PMSA still has significant concerns regarding the adoption and implementation of this proposed regulation. These concerns are with regard to both the terminal planning requirements that we feel, while markedly improved over earlier draft regulations, have nonetheless not been adequately addressed, and the eventual legal issues that will undoubtedly arise from the attempted enforcement of this regulation against vessels . While we question the specifics of this regulation, we do not fundamentally disagree with much of the work proffered by CARB in its initial statement of reasons and recognize that there are air quality impacts that result from the use of on-board auxiliary engines while at berth in California ports.

Indeed, it is precisely because many of our members have already voluntarily adopted future practices analogous to the provisions of the regulation while still other companies are continuing to develop additional measures and strategies to further reduce emissions from vessels at berth that we strongly recommend that the proposed regulation be significantly refocused.

In addition to some concerns regarding methodology and the development of the proposed regulation, we would recommend the following modifications:

1) that the shoreside infrastructure planning sections of the proposed rule be rewritten to be more reflective of the realities of port infrastructure investment, the economics of marine terminal operations and good planning principles; and,

2) that the current regulation's proposed enforcement against ocean going vessels be set aside in favor of the future development of voluntary programs or memoranda of understanding involving all ocean carriers, terminal operators, port authorities, and power utilities that will still accomplish the emission reduction goals outlined in the ISOR, at the earliest possible date, thus avoiding future litigation over the implementation of the vessel portions of the regulation.

We would, of course, be more than willing to work with the Board, CARB staff and all interested stakeholders in developing these modifications on a very short timeline and moving forward with a solution that not only avoids contentious and unnecessary litigation but one that also preserves the primacy of the port-tenant relationship and the economic models on which our business relies.

The Current Record Rulemaking Requirements on Marine Terminals to Plan and Improve Port Property Places Unnecessary and Arbitrary Burdens on Port Tenants That They Have No Authority To Implement and The Likely Unintended Result Is Serious Competitive Disruptions Among Port Tenants

While PMSA is appreciative of the efforts by CARB staff to take some reasonable steps in accommodating the complexities of the international maritime industry, the proposed regulations still threaten the viability of the established business models in operation at the ports of California and will throw our ports out of balance with ports throughout the rest of the country and internationally. They would also tend to seriously undermine existing investments in California's tideland trust assets and compromise the ability of marine terminals to continue to anticipate and amortize the costs associated with their current leases. The issues raised here are specific to the proposed designation of the marine terminal operator as the party responsible for terminal infrastructure planning.

Simply put, the terminal lessee or terminal operator is not the appropriate entity to hold responsible for the planning of the installation of any electrification infrastructure. The appropriate entity for such planning of infrastructure installation is either the port authority itself or possibly a local utility if it retains ownership and rights to the infrastructure. Requiring terminals to specify implementation schedules for "infrastructure modification" for not only their own marine terminal infrastructure, over which they have no direct control, but also other port properties and off-port utility improvements is a fatal disconnect between planning and the State's desire to actually implement these plans.

There are many reasons why a public port authority is, logically, the preferential planning entity for the purposes of implanting this regulation. Chief among those is that, since there must be a coordinated investment in infrastructure between a utility provider and the port as the owner of the property to be improved, planning should also be done by those entities. In addition, given the likely utility requirements related to substation siting, easements and high capacity electric infrastructure necessary to be provided, ports have the tools and authority to act in a comprehensive manner that reduces cost, increases efficiency and causes the least amount of disruption to terminal operations not available to individual terminals. Also, terminal operators have no existing expertise with these highly technical issues that implicate safety and can impact entire electrical networks, and to nonetheless expect a terminal to act with such expertise for the purposes of this proposed rule is not realistic.

Specifically, with respect to the identification of terminals as the planning entities, the current requirements are problematic for the following eleven reasons:

1. The terminal lessee or operator does not hold a right of property ownership of the terminal. All rights of land use at the terminal are provided to the terminal lessee or operator through lease contract by the port authority. Under the terms of the lease, any substantive physical improvements to the terminal must be granted through permit by the port authority. In addition, the port authority has control over the terms of such a permit; including but not limited to such aspects as timing and contracting restrictions. As such, a terminal operator does not have any effective rights to implement or control their own "plan," and to the extent that they are

required to defer to the Port on infrastructure development the Port itself should develop the plan to be submitted under this regulation.

2. The terminal lessee or operator does not retain economic benefits of the improvement beyond the terms of the lease. A terminal operator may have only a short period of time remaining on a lease, with little time to recoup whatever benefits may derive from the use of such infrastructure. At the termination of the lease, the port authority retains all benefits from physical improvements made to the terminal property into the future without burden of compensation to the lessee. The lessee has no guarantee of a lease renewal and thus may find it impossible to sufficiently amortize costs. This would lend one to the adoption of a public policy that vested planning requirements in the hands of those who retain the benefits that would result from the implementation of such a plan rather than a tenant with a short-term interest in the property.

3. The issue of limited time remaining on the lease also affects the equity of the rule to the regulated population. A terminal lessee with a substantial period remaining on a lease may be in a position to adopt a plan in coordination with the Port in which the long term lessee would derive substantially greater benefit than a lessee with a short time remaining on his term and no guarantee of a lease renewal. This situation does not exist if the port authority is in charge of the infrastructure planning, as the Port itself is in the best position to ensure equity amongst the various port tenants by spreading the investment costs through all port lease agreements.

4. The existing business models at ports around the world and in California operate to allow the terminal lessee to calculate their major fixed cost exposure over the life of the lease term. Under typical lease terms, the port authority is responsible to provide infrastructure to accommodate basic terminal and ship operations needs, including the basics of power generation, accommodating sewage and other discharges and, in conjunction with city and local government, access to the terminal property. Improvements to accommodate operational changes are often financed by the terminal lessee, but substantive infrastructure improvements that are retained beyond the term of the lease are borne by the lessor or port authority. Since they are the entity that will be making the actual improvements, and ultimately will be deriving the long-term benefit of the infrastructure to be paid for with private dollars, the Ports should be responsible for planning the infrastructure for cold-ironing similarly to the Ports planning processes for all other infrastructure.

5. Under recognized commercial lease terms, the landlord is responsible for maintaining the property to existing regulatory code. In this case it is clear that the port authority acting as landlord is responsible for providing requirements as laid out in the draft regulation. For example, suppose that at the time the regulations become effective the terminal is not under lease and there is no terminal lessee. Subsequent to the effective date of this regulation any terminal lessee would anticipate that the landlord had improved the property to reflect the requirements mandated by this regulation, including the implementation of a plan to accommodate shoreside power requirements.

6. As a practical matter, the Port authority, acting as landlord, has the opportunity to likely pass on additional costs sustained during an existing lease of a terminal when the parties engage in a scheduled financial review, which provides for revenue adjustments. This provision for renegotiated revenue terms is standard across the industry and is included in virtually all marine terminal lease agreements. The port can expect to be covered for the amortized portion of the investment over whatever the appropriate remaining life of the lease, with the expectation that subsequent lessees will absorb whatever remaining amortized costs remain upon termination of previous leases.

7. Furthermore, while not the ideal situation, marine terminal operators have from time-to-time found themselves going for multiple years without a renewal and are forced to operate on month-to-month lease terms with their landlord port. In such a situation the nebulous economics of private investment in public infrastructure outside the terms of the lease become acute as not only does final ownership not rest in the tenant but the costs of such an infrastructure improvement can only be carried over the existing term of the lease, which, in this case is of an undeterminable duration and, for legal purposes, can only be presumed to last for a very short period of time.

8. Port authorities have the ability to bond against non-terminal specific revenue streams as the basis for infrastructure financing. Most public ports have a diversified portfolio of assets beyond marine terminal operations that can be used as a basis for accessing capital markets. Moreover, since their obligations are not terminal specific they are often also diversified across time as well as revenue streams, while any project-specific capital financing acquired by a private terminal lessee will necessarily be required to be matched by revenues from that specific project or otherwise require a guarantee by the tenant to be paid from operations outside of its interest in a California public port.

9. Port authorities have access to capital funding mechanisms at much better terms than any private business interest. The bonding capabilities available to public port authorities or their respective governing cities allow them access to capital not available to private business and over a much longer period of amortization. As such they are better situated to develop these capital improvements with the least impact to their existing business model. Placing this requirement on the terminal lessee threatens to undermine the competitive nature of California's ports and could result in the establishment of an untenable business model. The result could be a substantial shift of cargo to gateways in other states and nations.

10. Terminal operators are not a lead agency for purposes of CEQA – that authority rests with the Ports themselves. While we appreciate that the Ports will move forward with compliance with CEQA in a manner that is expeditious and appropriate it will be nearly impossible for a terminal operator to specify with any sense of certainty what this schedule will be for terminal, port and utility improvements. In addition, this concern regarding a terminal's inability to predict a schedule based on the actions of others also extends to all other possible regulatory permissions that may be required to be acquired by or from a local government in these processes, including possible condemnation proceedings, utility relocations and easements.

11. Specification and planning control over specified private development and installation of any physical infrastructure improvements on public property has the potential to raise complex and novel property tax problems for terminal lessees with regard to the future assessment of possessory interests held in public port authority property. Current assessed valuations of a marine terminal lessee's possessory interest in a public port asset are based exclusively on the terms of their stated lease agreement, consistent with multiple Board of Equalization rules and Court decisions. These rules do not contemplate any private valuations outside of the existing lease, and to encourage a county assessor to possibly evaluate whether or not the specification and planning control required in this regulation would introduce a level of uncertainty into our current property tax system that would only serve to compound the other economic inequities facing terminals in this proposal and raise the specter of unfair imposition of tax liability.

In addition, there are many other questions raised that must be considered when segregating an entire port complex into multiple terminals for purposes of this rulemaking. If terminals disagree over the positioning and alignment of shared infrastructure how would such conflicts be resolved under the current rule? Lack of agreement could severely derogate the efficacy of the infrastructure that is developed and conceivably be counterproductive in terms of actually achieving the goals of this regulatory initiative. If the utility or port authority chooses to route electrical infrastructure in a manner inconsistent with a terminal's infrastructure plan who is responsible? If a terminal is unable to implement a terminal plan because it has not received permission from the Port is there an exception in the rules for such a situation? Will each individual terminal be responsible for the accuracy of the schedule required under this rule? If so, what provision if any will there be for CEQA delays?

To alleviate these concerns and answer these questions we would suggest several simple changes to paragraph (g) of the proposed rulemaking that would give responsibility for port planning to the ports rather than placing that burden on their terminal tenants. *Please find suggested amendments attached to this letter as Appendix A that would address these concerns.*

The Board Lacks Legal Authority to Pursue This Regulation which Requires Retrofits of Vessels, Is Preempted by the Federal Clean Air Act, and Is Generally Inconsistent with International Principles Governing Vessels

The Board's authority in this rulemaking, derived from Health & Safety Code §§ 43013 and 43018, explicitly authorizes ARB to regulate marine sources only to the extent it is not preempted by federal law. The Board's authority derived from Health & Safety Code §39666 is also subject to federal pre-emption. In addition, the State's statutory authority to regulate emissions from mobile non-road sources is, to any extent, derived directly from the explicit grant of such authority under federal law. These regulations, similar to the previous regulations on Auxiliary and Diesel Electric Engines, have exposed several fundamental problems concerning the State's authority to impose such a regulation on vessels, both U.S.-flagged and foreign-flagged. Specifically, PMSA believes that the proposed regulations' paragraph (d) should not be adopted. This section places requirements on vessels that are

inconsistent with, and contradictory to, existing statutes, court decisions and other provisions of law, and they exceed the rulemaking authority of the Board.

This regulation if adopted would require many vessels to retrofit or perform modifications to conform to its standards or to conform with an Emissions Reduction Option under this rule. The requirement for vessels to retrofit or perform modifications to their ships and engines is beyond the authority of the State and is facially inconsistent with any assertion that this regulation presents a simple "in-use" regulation. Moreover, such retrofits and or modifications can affect the stability, structural integrity and general safety of the ship. Any imposed requirements or changes that can result in such impacts are the purview of the U.S. Coast Guard and the classification societies as designated by a ship's flag state. Because it is clear that many vessels will require retrofit or modification, even within the limited fleet survey conducted by the Board, such a burden is beyond the authority of the State to impose.

The retrofit requirements of the proposed regulation will be preempted under Section 209(e) of the Clean Air Act. In 1990, Congress amended the Clean Air Act ("CAA") to authorize the U.S. Environmental Protection Agency to adopt emission standards and other requirements related to control emission from nonroad sources. Congress amended Section 209, which pertains to motor vehicle emission adding Paragraph (e) (1):

> No State or any political subdivision thereof shall adopt or attempt to enforce any standard or other requirement relating to the control of emission from either of the following new nonroad engines or nonroad vehicles subject to regulation under this chapter…

Congress further added Paragraph (e) (2), which allows California to adopt standards and other requirements relating to the control of such engines, other than those identified in subpart (1), upon receiving authorization from U.S. EPA. Both paragraphs of Amended Section 209 apply to marine engines.

These amendments were the subject of an appeal in *Engine Manufacturers Association v. US EPA*, 88 F.3d 1075 (D.C. Cir.1996), where it was noted the California exemption was primarily based upon the fact that California had adopted emission standards prior to the enactment of the Air Quality Act of 1967. *Id* at 1078. The appellate court noted that Congress intended to preempt states from regulating emissions from motor vehicles, and based on the statutory construction of Section 209 found the amendments also preempted California from adopting and enforcing "standards and other requirements relating to the control of emission from nonroad vehicles," including marine engines. *Id* at 1091.

During the adoption of EPA's Nonroad Emission-Control Program's rulemaking regarding control of emissions from marine engines U.S. EPA determined that marine emission control proposals "should be considered in the broader context of EPA's nonroad emission-control programs, international activities, including MARPOL Annex VI, our previous marine emission control program, European Union (EU) initiatives, and activities at the state level." (Federal Register, Vol. 67, No. 103 at pp. 37553.)

The US EPA has made it clear in their statements concerning the regulation of ship emissions that they intend to work within the confines of established international treaties and conventions. In that regard, PMSA supports the US ratification of MARPOL Annex VI and the pursuit of Sulfur Emission Control Areas (SECA) for all of North America. In addition, both the Legislature and the Air Resources Board have also expressed their support for MARPOL Annex VI ratification and the establishment of a North America SECA. The Air Resources Board should consider the adoption of their marine emission control proposal in at least as broad of a rulemaking context as US EPA in order to fairly evaluate their rulemaking using the proper totality of the record.

Yet, while sulfur emission controls exist in international law, even if they have, sadly, not been fully implemented by the federal government, the assumption of the regulation seems to be that a commonly accepted international standards already exists and provides uniform specification for vessels to retrofit that will enable them to access shorepower infrastructure at all California Ports. In reality no international standards or uniform specification exist. All installations to date have been done on a case by case basis with little to no consideration of the ability to use the vessel retrofits at other ports.

While this lack of uniformity may seem chaotic and unmanageable, PMSA views this diversity of applications and experimentation with shoreside technologies as a positive aspect of the current voluntary environment; a business environment in which a diverse community of pioneering ocean carriers are developing innovative strategies that fit their business models, and doing so within a highly competitive marketplace. This innovation will be stifled if the state moves forward with setting de facto State standards for vessels otherwise built in compliance with international standards prior to the development of a uniform international approach to shorepower. Insofar as shoreside alternatives are concerned, the prescriptive standards and timelines issued under this rule will impact existing and ongoing innovation and impair investment in otherwise promising technology. Clearly, this rule also has the potential to penalize and discourage those who would otherwise work to develop and adopt alternative technologies sooner than 2014. We therefore, in short, view the real possibility of paying twice for expensive technology and infrastructure as effectively discouraging early adoption, and support of innovation, of such technology that would pave the way for significant near term emission reductions. By contrast, the maritime community anticipates that, as with most vessel rules adopted by the IMO, an international standard would not punish those who lead the industry as early adopters of new and innovative technologies, but would seek ways to compliment their laudable efforts.

The lack of international standards is also important to the viability of this rulemaking in that the current proposed rule creates significant equity issues with respect to threshold fleet composition issues, which are otherwise not based on substantial evidence. The ISOR states that the reason that the proposed regulations "concluded that the most attractive candidates for cold-ironing are container ships, refrigerated cargo (reefer) ships, and passenger ships, and the most likely locations to cold-iron in California are the Ports of Los Angeles, Long Beach, Oakland, San Diego, San Francisco and Hueneme" is because "the most attractive ship candidates were found to be those ships that make frequent visits to a California port, spend a sufficient number of hours at berth, and have an ample power demand while hotelled."

However, despite the identification of these criteria, the ISOR goes on to state that it is "not as cost effective at this time to cold-iron bulk and general cargo ships and vehicle carriers". Yet, the regulation only applies to types of vessels and does not address either the frequency of visits or the loads at berth, as the regulations simply require that those container, reefer, and passenger vessels that call at any terminal that receives more than 50 vessel calls in 2008 will be subject to the regulation.

These provisions are discriminatory in nature and reflective of the fact that there is no viable international standard for vessels. Here, these inequities will be heightened by the thresholds developed by the proposed rule, for example, in that a general cargo terminal that receives 49 general cargo visits and then one container or reefer vessels would be subject to the installing to the regulation for that one vessel, but another terminal that receives 49 passenger vessel calls would be exempt. The regulation also includes all container vessels, reefers, and passenger vessels regardless of the number of visits to a California Port, the length of stay or the power demand of those vessels. However, a general bulk vessel that may be a more frequent caller, spend numerous hours at berth, have ample power demand while hotelling, and otherwise meet all of those requirements is exempt. In order for this regulation to avoid being clearly discriminatory it would appear that the regulation should be applied to all vessels based on the stated criteria that can be directly related to emissions from those vessels. Designation by type of vessel without provisions to excuse infrequent calls of low duration and activity cannot be justified on the basis of air quality improvements and is clearly arbitrary and capricious under the stated objectives of reducing emissions from vessels at berth. In addition, designation of only certain public port authorities as ports subject to this rule is also discriminatory. If a vessel meets criteria at any of California's public ports or private marine terminals it is hard to understand why some vessels should be exempt based on the location of their port call versus others who may meet fewer of the criteria calling at a listed port.

At a minimum, however we move forward, it is our belief that vessels should not be subjected to fees and penalties until the availability of adequate power supplies for all vessels calling at California ports can be assured, whether such power is supplied directly from the electrical grid or from distributed generation sources, and it would be inappropriate of the Board to create any de facto technological standards for vessels in order to comply with this regulation. Such an assurance should be drafted similar to a force majeure clause to exempt the ocean carrier from any associated liabilities that may result from no fault of the ocean carrier which is relying on the provision and availability of such power within the timeframe of the regulation.

The Ultimate Costs and Benefits of the Regulation are Uncertain and Cannot be Found To Satisfy the Substantial Evidence Requirement

As with the auxiliary engine emissions regulation effective on January 1st of this year, PMSA and others have previously commented that there is substantial uncertainty of the impacts and benefits of this regulation primarily due to the uncertainties inherent in the emission factors for ship auxiliary engines using the fuels assumed for this regulation. We will not replicate those comments here but will point out that if the emission factors are overstated, then the benefits of this regulation are equally overstated. Until this issue is resolved, the regulation should not be adopted by the Board.

In addition, the health risk assessment done for this regulation is too limited geographically to determine the actual emission reduction benefits. The modeling domain used was for the San Pedro Bay ports only and did not include the entire regulated area with regard to the multiple ports affected in this rulemaking. The proximity of the emission source is also very different for those assumed in the model, as are the exposure times of vessels at berth in different ports. In order to understand the full benefits and costs of implementing this proposed regulation CARB needs to do the appropriate modeling to determine the impacts and benefits based on the population densities, proximity, and exposure time to the appropriate vessels at the impacted ports throughout the state.

Also, as mentioned above, it is not clear what benefit the auxiliary fuel regulation and voluntary efforts already underway contribute to the cost effectiveness of the regulation. What is clear is that there is tremendous variability in: the land side infrastructure costs between and even within the various port authorities; the cost of electricity from the different power providers; secondary effects on air quality from increased generation of power by different utilities and/or distributed generators; and the cost of equipping the vessels for shore-side connection. For example, for container vessels the costs are expected to vary from 1.2 million dollars to over 5 million and passenger vessels vary from 2 million dollars in Seattle to 10 million in Los Angeles (Appendix E-1). While the average may appear to be cost effective that will not be much consolation for the terminal operator and ocean carrier that will suffer the high end of the range due only to their distance from existing infrastructure; their association with a specific port authority; their power supplied by a expensive power generator; or any other significant technological obstacles that arise in equipping vessels to make the necessary connection to the source of shorepower. There appears to be a real need to establish cost-effectiveness thresholds above which terminal operators and ocean carriers would be allowed to pursue less costly means of reducing at-berth emissions. The current regulation does not provide for any such consideration.

In the assignment of costs staff also fails to identify the ports as direct contributors (Table X-3). The terminal operators are on the hook for $540 million, ocean carries for $1.2 billion, and power utilities for $60 million. Yet, port costs are not assigned, even though it is they who own the land and are responsible for the improvements on the property under their jurisdiction. We understand that "staff assumes that the landlord ports will eventually recover their costs through modifications to terminal leases, while the non-landlord ports will recover their capital costs through fees collected from the carriers," (X-17-18), but that does not mean that port costs are not real and should be unaccounted for.

The analysis is also missing a full and complete evaluation of what the benefits of the voluntary efforts moving forward would be without the proposed regulation. As is clearly shown in the staff analysis, and as we have identified in this letter, several companies have already made significant investment in equipping vessels and more are obligated to do so in the near future through the terms of their existing leases. In addition, while not yet implemented, the San Pedro Bay ports have already adopted their Clean Air Action Plan to equip terminals with the necessary infrastructure over the next few years. However, there is still no analysis of the benefits of those actions without the proposed regulations, much less of the added benefit of the regulation after those other voluntary efforts are considered. Further, there is real confusion of the claimed benefits of the regulation in light of the pending low-sulfur fuel regulations for ocean-going vessels. While there is some discussion of greatly reduced cost

effectiveness for particulate matter (PM) reduction and the ongoing benefits of the rule in addition to the current regulations on auxiliary engines, there is no clear analysis of the costs and benefits of these regulations after full implementation of local measures and compliance, whether regulatory or voluntary, with the standards envisioned under the current existing laws and voluntary measures taken as a whole.

A Legal Alternative To Vessel Regulation Already Exists in the CARB Toolbox and PMSA Would Request that a MOU Process Be Initiated to Avoid Future Litigation

While we don't anticipate litigation would be forthcoming on this rule immediately, the planning and acknowledgment of this rule will begin to have palpable costs to the industry long before its full implementation in 2014. Therefore it is imperative that the industry and CARB work to avoid otherwise unnecessary litigation that may follow. The clearest and most direct way to work towards a mutually acceptable outcome that will yield significant results similar in scope and affect to those that are expected to accrue from the proposed rulemaking would be to work out a Memorandum of Understanding between industry and the Board.

To make the MOU fully actionable and comprehensive and consistent with Port plans, adopted pursuant to our proposed amendments to paragraph (g), it would need to be developed under a scenario that doesn't punish early adopters, recognizes that some vessels and marine terminals will be more suited for shoreside power in the short-term than others, and acknowledge the lack of an international standard. We believe that the costs would be substantially reduced, the benefits accrued would be similar in significance to those presented to the Board at present, and that in such a scenario the proposed rules that are currently before you, with the exception of paragraphs (d), (e) and (f), could move forward without major industry opposition or the threat of litigation hanging over the Board.

A final consideration in favor of a voluntary MOU approach is the existence of the 1B bond funds that could be used to provide shoreside infrastructure and/or ship retrofits in the absence of a regulation but would be restricted, if not precluded, after the regulations are approved.

Conclusion

PMSA and its members are committed to reducing impacts on the environment and surrounding communities from ocean going vessels. With that commitment comes a desire to truly assist CARB in addressing these issues and hopefully exploring other mechanisms that will achieve our shared goal of reducing emissions from vessels to the maximum extent practical at the earliest possible date, but from a financial, logistical and legal perspective we do not believe that this regulation can be implemented in its current form.

In addition to actively supporting and facilitating industry commitment to the ratification of MARPOL Annex VI, the establishment of a North American Sulfur Emission Control Area, and our emphatic support of the U.S. EPA position to IMO to further reduce emissions from ocean-going vessels,

PMSA, on behalf of our members, still desires to pursue the voluntary Memorandum of Agreement that we have previously discussed with CARB to develop practical near term strategies to reduce emissions from vessels at the earliest possible date through a cooperative agreement.

PMSA appreciates the opportunity to comment on this proposed regulation. We would also respectfully request that any and all of our previous comments made during this rulemaking and on previous occasions regarding related CARB initiatives related to vessel emissions be incorporated by reference into this rulemaking file, including, but not limited to the documents listed in Appendix B.

If you have any questions or need clarification of our abbreviated comments, please feel free to contact me or T.L. Garrett, Vice President, at (562) 377-5677, or by e-mail at tgarrett@pmsaship.com.

Sincerely,

John McLaurin
President

cc: Mary Nichols, Chair, Air Resources Board
Boardmembers, Air Resources Board
Mike Tollstrup, CARB
Mike Waugh, CARB
Grant Chin, CARB

APPENDIX A

Suggested Amendments to 13 CCR 2299.3(g) and 17 CCR 93118.3(g):

(g) *Port*~~Terminal~~ Plan Requirements.

(1) A *Port shall submit a plan that includes every marine* terminal that receives more than 50 vessel visits in 2008 ~~shall submit a plan~~ for the Executive Officer's approval that discusses how the *Port* ~~terminal~~ will accommodate the vessels that will visit ~~the~~ *each marine* terminal *included in the submitted plan and* who are subject to subsection (d)(1) and (d)(2). The *Port* ~~terminal~~ shall submit the plan and subsequent updates to the plan according to the schedule below (Table 2). The plan updates shall address any contingencies that may be necessary for the vessels to meet the requirements of subsection (d)(1) and (d)(2) by the applicable dates.
(2) Plan Requirements for Grid-Based Shore Power.
(A) Specify the schedule for implementing infrastructure modifications, including the following:
1. Utility infrastructure improvements, if any, outside the port boundary;
2. Improvements to port infrastructure; and
3. Major infrastructure improvements to *marine* terminal*s*.
(B) Identification of existing berths to be modified or new berths to be constructed that will satisfy the requirements of subsection (d)(1).
(3) Plan Requirements for Alternative Control Technologies.
(A) Description of the approach that will be used to reduce in-berth vessel emissions, including whether the approach is a vessel based approach or shore-based approach;
(B) Identification and description of equipment;
(C) Berth(s) where the equipment will be used;
(D) Specific vessels affected by the technology; and
(E) Estimate of the expected reductions in NOx and PM emissions from vessels using the technology, including documentation supporting the anticipated reductions.
(4) Plan Requirements for a Combination of Grid-Based Shore Power and Alternative Control Technologies.
(A) Identification of which berths will implement grid-based shore power and which berths will implement alternative control technologies
(B) For berths implementing shore-based grid power, the plan must contain the information specified in subsection (g)(2).
(C) For berths implementing alternative control technologies, the plan shall contain the information specified in subsection (g)(3).
(5) A *utility or marine terminal at a* port may submit terminal plans required under subsection (g)(1) *with respect to specific* ~~on behalf of the~~ terminals located at that port *on behalf of the Port*.

APPENDIX B

PMSA Specific Comments and Documents to Be Incorporated By Reference Into the Rulemaking File:

- Correspondence with Dr. Pingkuan Di, CARB, November 21, 2005
  Re: Draft Diesel Particulate Matter Exposure Assessment Study for the Ports of Los Angeles and Long Beach

- Correspondence with Mr. Mike Waugh, CARB, April 5, 2006
  Subject: Comments on the "Preliminary Draft Evaluation of Cold-Ironing of Ocean Going Vessels at California's Ports"

- Submission to Clerk of the Board, CARB, April 19, 2006
  SUBMITTAL OF COMMENTS
  Subject: Comments on the "Proposed Emission Reduction Plan for Ports and Goods Movement in California"