State of California
AIR RESOURCES BOARD

Resolution 07-58

December 7, 2007

Agenda Item No.: 07-12-7

WHEREAS, section 39002 of the Health and Safety Code provides that the control of air pollution from vehicular sources, except as otherwise provided in Division 26 of the Health and Safety Code, shall be the responsibility of the Air Resources Board (ARB or Board);

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (ARB 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 39515 and 39516 of the Health and Safety Code provide that the Board may delegate any duty to the Executive Officer which the Board deems appropriate and that any power, duty, purpose, function, or jurisdiction which the Board may lawfully delegate shall be conclusively presumed to have been delegated to the Executive Officer unless the Board has expressly reserved such authority onto itself;

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

WHEREAS, under section 39650 of the Health and Safety Code, the Legislature finds and declares that it is the public policy of the State that emissions of toxic air contaminants should be controlled to levels that prevent harm to the public health;

WHEREAS, pursuant to section 39662(b) of the Health and Safety Code, on August 27, 1998, the Board identified particulate matter (PM) emissions from diesel fueled engines (diesel PM) as a toxic air contaminant pursuant to article 3 (commencing with section 39650), chapter 3.5, part 2, division 26 of the Health and Safety Code;

WHEREAS, pursuant to section 39669.5(a) of the Health and Safety Code, the Office of Environmental Health Hazard Assessment has listed diesel PM and other compounds associated with diesel exhaust as possibly causing infants and children to be especially susceptible to illness;

WHEREAS, in identifying diesel PM matter as a toxic air contaminant, the Board determined, pursuant to section 39662(c) of the Health and Safety Code, that there is not sufficient scientific evidence to support identification of a threshold level below which no significant adverse health effects are anticipated; this is codified in title 17, California Code of Regulations (CCR), section 93000;

WHEREAS, pursuant to section 39665 of the Health and Safety Code, ARB staff prepared a comprehensive risk reduction plan (Diesel Risk Reduction Plan) to significantly reduce PM emissions from diesel-fueled engines and vehicles, which the Board approved on September 28, 2000;

WHEREAS, sections 39658, 39665, 39666, and 39667 of the Health and Safety Code authorize the Board to establish airborne toxic control measures (ATCM) for substances identified as toxic air contaminants in accordance with specified criteria;

WHEREAS, in fulfilling the requirements of the aforementioned sections set forth in the paragraph immediately above, and specifically section 39667 of the Health and Safety Code, the Board is required to consider adoption of an ATCM revising emission standards for vehicular sources to achieve the maximum possible reduction in public exposure based on its prior determination not to specify a threshold exposure level for diesel PM under section 39662 of the Health and Safety Code;

WHEREAS, an ATCM for a vehicular source, developed pursuant to section 39667 of the Health and Safety Code, is required to be based on application or utilization of the best available control technologies (BACT) or more effective control methods, unless the Board determines, based on an assessment of risk, that an alternative level of emission reduction is adequate or necessary to prevent an endangerment of public health;

WHEREAS, in section 43000 of the Health and Safety Code, the Legislature has declared that the emissions of air pollutants, including oxides of nitrogen (NOx) and PM from motor vehicles, are the primary cause of air pollution in many parts of the State, that the State has the responsibility to establish uniform procedures for compliance with standards which control or eliminate those air pollutants, and that vehicle emission standards applied to new and used motor vehicles equipped with motor vehicle pollution control devices are standards with which all motor vehicles shall comply;

WHEREAS, section 43013(a) of the Health and Safety Code authorizes the Board to adopt motor vehicle emission and in-use performance standards which it finds to be necessary, cost-effective, and technologically feasible;

WHEREAS, Health and Safety Code section 43013(b) authorizes the Board to adopt motor vehicle emission standards and regulations for heavy-duty motor vehicles, including drayage trucks;

WHEREAS, in section 43013(h) of the Health and Safety Code, the Legislature announced that it is its intent that the Board act as expeditiously as is feasible to reduce NOx emissions from diesel vehicles that significantly contribute to the State's air pollution problems;

WHEREAS, section 43018(a) of the Health and Safety Code directs the Board to endeavor to achieve the maximum degree of emission reduction possible from vehicular and other mobile sources, including drayage trucks, in order to accomplish the attainment of the state ambient air quality standards at the earliest practicable date;

WHEREAS, sections 39674-39675, 42400-42400.2, 42400.3.5, 42402, 42402.2, 42402.4, 42410, 43016, 43017, and 43023 of the Health and Safety Code authorize the Board to request that state and local prosecutors seek criminal prosecution, civil and administrative penalties, and injunctive relief for violations of adopted ARB regulations and ATCMs;

WHEREAS, under the federal Clean Air Act (CAA), the United States Environmental Protection Agency (U.S. EPA) has established national ambient air quality standards (NAAQS) for pollutants considered harmful to public health, including fine particulate matter (PM2.5) and ozone, and states that exceed the NAAQS are required by federal law to develop State Implementation Plans describing how they will attain the standards by certain deadlines;

WHEREAS, pursuant to the Legislature's directives under Health and Safety Code section 39606, the Board has adopted state ambient air quality standards (state ambient standards) for PM and NOx;

WHEREAS, many areas of California, including the South Coast and San Joaquin Valley air basins, are designated non-attainment for both the state ambient standards and NAAQS for ozone, for which NOx is a precursor, and both the South Coast and San Joaquin Valley Air Basins are designated non-attainment for both the state ambient standards and NAAQS for PM2.5, for which NOx and diesel PM are significant contributors;

WHEREAS, the federal CAA requires the South Coast and San Joaquin Valley air basins to attain the $PM_{2.5}$ NAAQS by 2015; because of the annual average nature of the standard, all of the reductions must be achieved by 2014 to ensure compliance by the 2015 deadline, and the same air basins, having the most severe ozone concentrations, are expected to have until 2023 to attain the federal ozone NAAQS;

WHEREAS, the ozone SIP was due to U.S. EPA by June 2007 and the $PM_{2.5}$ SIP is due in April 2008, and air quality modeling indicates that significant reductions of both NOx and diesel PM are crucial to meeting the two NAAQS;

WHEREAS, the Board, pursuant to authority granted under Health and Safety Code sections 43013(b) and 43101, and U.S. EPA, pursuant to its authority granted under

section 202(a), have adopted more stringent emission standards for new diesel engines used in heavy-duty vehicles; these standards will be first introduced for sale commencing with the 2007 model year and phased in through the 2010 model year;

WHEREAS, the Board has established a program to verify diesel emission control strategies (VDECS) in title 13, CCR, section 2700 through 2710, and has to date verified strategies that will achieve diesel PM emission reductions of at least 85 percent;

WHEREAS, in January 2005, a Goods Movement Cabinet Workgroup, created by Governor Schwarzenegger and led by the California Environmental Protection Agency and the Business, Transportation and Housing Agency, established a policy for goods movement and ports to improve and expand California's goods movement industry and infrastructure while improving air quality and protecting public health;

WHEREAS, the Goods Movement Cabinet Workgroup, in collaboration with the logistics industry, local and regional governments, neighboring communities, business, labor, environmental groups, and other interested stakeholders created a two-phased Goods Movement Action Plan, which outlines a comprehensive strategy to address the economic and environmental issues associated with moving goods via the state's highways, railways, and ports;

WHEREAS, in April 2006, the Board approved its Goods Movement Emission Reduction Plan, which sets forth a framework for action that identifies projects needed to reduce emissions from goods movement-related sources, including those from drayage trucks;

WHEREAS, drayage trucks are vehicular sources of substantial amounts of diesel exhaust PM, criteria pollutants (e.g., nitrogen dioxide), and precursors of criteria pollutants (e.g., NOx);

WHEREAS, ARB staff has determined that the current U.S. EPA standards do not sufficiently reduce emissions of diesel exhaust PM and other criteria pollutants and precursors from in-use drayage truck engines certified to pre-2007 California and federal emission standards;

WHEREAS, ARB staff met and worked with affected private industry, federal, state, and local public agencies, and the public in developing these regulations, holding numerous meetings with individual affected stakeholders, eight public workshops, two public consultation meetings, and three community outreach meetings between August 2006 and November 2007, and sending out over 30,000 mailings;

WHEREAS, with the information and comments received from such meetings, ARB staff prepared a report, entitled "Staff Report: Initial Statement of Reasons for Proposed Rulemaking – Proposed Regulation for Drayage Trucks" (ISOR) and "Technical Support Document: Regulation to Control Emissions from In-Use On-Road Diesel-Fueled Heavy Duty Drayage Trucks" (Technical Support Document), both released on October

19, 2007 (collectively referred to hereinafter as "Staff Report"); these reports along with the report "Risk Reduction Plan to Reduce Particulate Matter Emissions from Diesel-Fueled Engines and Vehicles," adopted by the Board on September 28, 2000, constitute the reports required under Health and Safety Code section 39665;

WHEREAS, the Staff Report identified and explained the need and appropriate degree of regulation of diesel PM , NOx, and other pollutants from drayage trucks and the feasibility of regulating emissions from diesel engines on drayage trucks that operate at California's ports and intermodal rail yards;

WHEREAS, the Staff Report further discussed, to the extent data could reasonably be made available, the factors specified in Health and Safety Code sections 39665(b), 43013, and 43018, including, but not limited to the estimates of emissions, exposure, potential cancer risk associated with the operation of drayage trucks at California's ports and intermodal rail yards, feasible control options, potential environmental impacts, and the necessity, cost-effectiveness, and technological feasibility of the proposed regulation;

WHEREAS, the Staff Report also discussed risk evaluations ARB staff has performed of exposure to diesel exhaust PM emissions from diesel engines operated on drayage trucks, using U.S. EPA-approved and ARB-recommended air dispersion models, and these evaluations indicate potential cancer risks for off-site receptor locations near California's major ports up to levels exceeding 500 chances in a million;

WHEREAS, in addition to discussing the potential cancer risks due to exposure to diesel exhaust PM emission, the Staff Report discussed non-cancer risk evaluations ARB staff performed of exposure to diesel exhaust PM emissions from drayage truck diesel engines, and these evaluations indicate that exposure to these emissions can be associated with premature deaths and numerous other non-cancer health impacts;

WHEREAS, in addition to discussing the effects of exposure to diesel exhaust PM, the Staff Report further determined that the emissions from drayage truck diesel engines contribute to levels of ozone and particulate matter that exceed federal and state ambient air quality standards;

WHEREAS, Attachment A hereto contains the proposed Regulation for In-Use On-Road Diesel-Fueled Heavy-Duty Drayage Trucks, title 13, CCR, section 2027, as set forth in Attachment A to the ISOR, and Attachment B contains staff's suggested modifications to the initially proposed regulation, based primarily on comments received since release of the ISOR;

WHEREAS, in accordance with Health and Safety Code section 39665(c), the Staff Report and relevant comments received during public consultation with the air pollution control and air quality management districts (districts), affected sources, and the public were made available for public review and comment at least 45 days prior to the public hearing to consider the proposed regulation;

WHEREAS, the proposed regulation as set forth in Attachment A, with the modifications described in Attachment B, would, in a cost-effective manner, achieve significant emission reductions of diesel PM and NOx by requiring that: drayage trucks are registered in a statewide Drayage Truck Registry, pre-1994 model year engines are retired or replaced with 1994 or newer model year engines by 2010, 1994 through 2003 model year engines reduce PM emissions by a minimum of 85 percent by 2010, and all drayage trucks meet or exceed 2007 California and federal emission standards by 2014;

WHEREAS, the emission standards can be achieved through the replacement of existing engines with new clean engines, by demonstrating that existing engines meet the emission strategies, or by implementing equally-effective verified emission control strategies;

WHEREAS, the Board has considered the impact of the proposed regulation on the economy of the State and the potential for adverse economic impacts on California business enterprises and individuals;

WHEREAS, sections 38500 et seq. of the Health and Safety Code, enacted by the Global Warming Solutions Act of 2006 (Assembly Bill 32), requires ARB staff to adopt regulations and other requirements that would reduce by 2020 statewide greenhouse gas emissions to the equivalent of 1990 levels;

WHEREAS, the California Environmental Quality Act (CEQA), section 21080.5 of the Public Resources Code and Board regulations at title 17, CCR, section 60006 require that no project that may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

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

WHEREAS, the Board finds, based on its independent judgment and analysis of the entire record before it, including the Staff Report, written comments and public testimony it has received, that:

In accordance with Health and Safety Code section 39667 and based upon the Board's determinations under Health and Safety Code section 39662, the regulation approved herein has been designed to achieve the maximum possible reduction in public exposure to toxic air contaminants utilizing BACT;

In accordance with Health and Safety Code section 43013(b), the in-use emission limits and other requirements of the regulation approved herein are necessary, cost-effective, and technologically feasible for drayage truck diesel engines within the time provided for compliance;

The use of BACT with drayage truck diesel engines is cost-effective and technologically feasible;

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

Without the regulation approved herein, statewide baseline emissions of diesel exhaust PM and NOx from drayage truck diesel engines are expected to be 3.0 tons per day (TPD) in 2010 and 68 TPD in 2014, respectively;

The regulation approved herein would reduce emissions of diesel exhaust PM and NOx emissions statewide by about 2.5 TPD in 2010 and 42 TPD in 2014, respectively;

Without the regulation approved herein, baseline emissions of diesel exhaust PM and NOx from drayage truck diesel engines within the SCAQMD are expected to be 2.2 TPD in 2010 and 48 TPD in 2014, respectively;

The regulation approved herein would reduce emissions of diesel exhaust PM and NOx emissions by about 1.9 TPD in 2010 and 30 TPD in 2014, respectively, within the SCAQMD;

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

The reduction in ambient diesel exhaust PM levels resulting from the regulation approved herein will likely prevent an estimated 1,200 premature deaths by 2020, with a total valuation pursuant to standard U.S. EPA methodology of $8.7 billion for avoiding both morbidity, as well as other various non-cancer health effects;

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, indicates that a total added cost incurred for all companies operating drayage trucks to be $1.1 billion to $1.5 billion over the life of the regulation;

The economic impact on California's economy using the E-DRAM model indicates the gross state output would be reduced less than 0.03 percent and personal income would be reduced less than 0.02 percent and would result in a small impact to California's economy compared to that of California's expected economic growth over the next seven years;

The staff economic impact analysis shows that affected small businesses may experience a decrease in gross margins (profitability) up to 4 percent in 2009 and up to 10 percent by 2013 under worst case scenarios;

Supplemental funding, a change in the drayage rate fee structure, or both, will be critical in allowing current truck owners to meet the requirements of the proposed regulation;

The staff estimates the cost-effectiveness of the regulation approved herein at $57 to $77 per pound of diesel exhaust PM reduced and $6 to $8 per pound of NOx reduced, which are within the ranges of other measures recently adopted by the Board;

No alternatives considered or that have otherwise been identified and brought to the attention of ARB would be more effective at carrying out the purpose for which the regulation is proposed, or be as effective, and less burdensome, to the affected businesses than the regulation approved herein;

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;

The benefits of the regulation approved herein to public health and welfare and the environment substantially outweigh the costs of compliance, implementation, and enforcement;

The regulation approved herein poses a minimal risk of innocent noncompliance and does not affect drayage trucks operating outside California's ports and intermodal rail yards which California is properly asserting jurisdiction;

WHEREAS, the Board further finds, in accordance with Health and Safety Code section 39650(e), that while absolute and undisputed scientific evidence may not be available to determine the exact risk from diesel exhaust PM from drayage truck diesel engines, it is necessary to take action to protect public health and that the maximum feasible emission reductions permitted by law should be obtained;

WHEREAS, pursuant to the requirements of CEQA and the Board's regulations, the Board finds that:

The emissions from drayage truck diesel engines contribute to regional air quality problems and to potential risk of cancer and noncancer health effects for residents living in communities near California's ports and intermodal rail yards as well as further inland;

Upon implementation, the regulation approved herein will reduce emissions of diesel exhaust PM, NOx, and carbon dioxide (a greenhouse gas) from drayage truck diesel engines;

The regulation approved herein will be consistent with ARB's environmental justice policy by reducing the health risks from diesel PM in all communities near California's ports and intermodal rail yards as well as further inland, including those with low-income and minority populations regardless of location;

The regulation approved herein will not have a significant adverse impact on the environment, in general, and will have no adverse effect on global warming, but will instead result in significant environmental benefits;

The regulation approved herein conforms to the requirements of the Goods Movement Emission Reduction Plan.

WHEREAS, public ports retain certain "proprietary powers" as trustee owners, and public entities have been recognized by the state and federal courts as having authority to contract or engage in other activities as market participants;

WHEREAS, because section 209(a) of the federal CAA does not preempt California from adopting emission standards for non-new on-road motor vehicles, California is not required to request a waiver from U.S. EPA pursuant to CAA section 209(b); and

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves for adoption new section 2027 of article 3, chapter 1, division 3, title 13, California Code of Regulations, as set forth in Attachment A hereto, with the modifications shown in Attachment B hereto and as follows: add any intermodal rail yard, including Fresno, that handled more than 100 drayage truck trips, including pick-ups or drop-offs, during any specific day on or after January 1, 2008.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to adopt the approved regulation with conforming modifications as may be appropriate, after making the modified regulatory language and any additional documents and information available for public comment for a period of at least 15 days, provided that the Executive Officer shall consider such written comments regarding the modifications and any additional documents and information as may be submitted during this period, shall make further modifications as may be appropriate in light of the comments received or as necessary to ensure consistency with the modifications approved by the Board, and shall bring any proposed changes to the Board for further consideration if the Executive Officer determines that this is warranted.

BE IT FURTHER RESOLVED that the Board by adopting the drayage truck regulation does not intend to preempt ports, in their capacity as proprietors and market participants, from adopting more stringent contracts or other requirements with drayage truck operations that they believe are necessary for safe and effective operations.

BE IT FURTHER RESOLVED that the Board directs the staff to monitor the implementation of the regulation, to report back to the Board in 2009 with an update on its progress, and to propose any amendments to the regulation that are warranted to resolve any implementation problems that may have arisen.

RECEIVED BY
Office of the Secretary
OCT 16 2008
RESOURCES AGENCY OF CALIFORNIA

I hereby certify that the above is a true and correct copy of Resolution 07-58, as adopted by the Air Resources Board.

Lori Andreoni

Lori Andreoni, Clerk of the Board

Resolution 07-58

December 7, 2007

Identification of Attachment to the Resolution

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| Attachment A: | The Proposed Regulation Order to Control Emissions from In-Use On-Road Diesel-Fueled Heavy-Duty Drayage Trucks, as set forth in Appendix A to the Staff Report (released October 2007). |
| Attachment B: | Staff's Suggested Modifications to the Original Proposal, distributed at the December 7, 2007 Board hearing. |

**State of California**
**Environmental Protection Agency**
**AIR RESOURCES BOARD**

Notice of Decision and
Response to Significant Environmental Issues

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| Item: | **PUBLIC HEARING TO CONSIDER THE PROPOSED ADOPTION OF REQUIREMENTS FOR DIESEL ENGINES ON DRAYAGE TRUCKS** |
| Approved By: | Resolution 07-58 |
| Adopted by: | Executive Order R-08-012 |
| Agenda Item: | 07-12-7 |
| Public Hearing Date: | December 6, 2007 |
| Issuing Authority: | Air Resources Board |
| Comment: | No comments were received identifying any significant environmental issues pertaining to this item. The Staff Report identified no adverse environmental effects. |
| Response: | N/A |
| Certified: | Amy J. Whiting<br>Regulations Coordinator |
| Date: | July 21, 2008 |

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