THE CALIFORNIA RAILROAD INDUSTRY

May 19, 2008

Mike Scheible and Peggy Tarrico
California Air Resources Board
1001 I Street
P.O. Box 2815
Sacramento, CA 95812

Re: Railroad Industry Comments on ARB's Preliminary Goods Movement Sector Scoping Plan Concepts

Dear Mike and Peggy:

The members of the Association of American Railroads -- the Class I freight railroads operating in California and the Pacific Harbor Lines (the Railroads) -- appreciate the opportunity to provide comments on ARB's Preliminary Goods Movement Sector Scoping Plan Concepts under AB 32 (the Preliminary Concepts) as presented during the workshop on April 15, 2007. We have directed our comments simultaneously to both of you as we are eager to resolve any policy differences as quickly as possible prior to the release of the Scoping Plan. Accordingly, we request a meeting as soon as possible to discuss the issues in this letter.

The ARB Staff's Preliminary Concepts for the Draft Scoping Plan causes very serious concerns in two fundamental ways:

1. The Preliminary Concepts fail to build a strategy that embodies the widely understood premise that increasing the portion of freight moved by rail would be beneficial in reducing emissions from the Goods Movement sector[1].
2. The Preliminary Concepts compound this shortcoming by proposing rail yard specific greenhouse gas (GHG) control programs for intermodal rail yards, and furthermore, do not propose a carbon limit for trucking facilities.

By proposing a diminishing carbon footprint on a facility or port level, the ARB staff ignores the efficiency benefits of rail over other modes of freight transportation and illogically burdens rail rather than maximizing its potential to reduce GHG statewide. This counterproductive approach is further compounded by ARB's failure to propose a similar declining carbon footprint for trucks or trucking facilities. Taken together these two concepts establish a flawed foundation for

[1] USEPA SMARTWAY TRANSPORTATION PARTNERSHIP *Technical Bulletin "A Glance at Freight Strategies: Intermodal Shipping,"* page 1
http://www.epa.gov/smartway/documents/intermodal%20shipping.pdf

ARB's proposed plan at the very outset of ARB's historic efforts to initiate the Scoping Plan. The Railroads are committed to working with the ARB staff to get the Scoping Plan on the right track before the first Draft Scoping Plan is presented to the ARB Board on June 26, 2008.

Recommendations

1. The Draft Scoping Plan should simultaneously propose to reduce emissions from the Goods Movement sector while affirmatively recognizing the inherent advantage in greenhouse gas (GHG) reduction achieved by moving goods by rail instead of truck. Because railroads are, on average, three times more fuel efficient than trucks (in ton miles per gallon), every ton mile of freight that moves by rail instead of truck reduces GHG emissions by two thirds or more.[2] These findings have been confirmed for Southern California in an analysis prepared for the Railroads by Dr. Larry Caretto, former ARB member and former Dean of the College of Engineering at Cal State Northridge (See attached chart). Rail should be utilized to its full potential as a GHG emissions reduction strategy over the next 12 years "in furtherance of achieving the statewide greenhouse gas limit" by 2020, as required by AB 32.

   For instance, an AASHTO[3] report estimates that an aggressive rail investment strategy could reduce truck vehicle miles traveled (VMT) by 10%.[4] Using 2004 emissions inventory for trucks, reducing truck VMT by 10% would save approximately 3.57 MMT CO2e or a net savings of 2.39 MMT CO2e when accounting for the increase in locomotive emissions. Such a net savings would constitute over a 75% reduction of the entire the entire "railway" GHG inventory which was 3.189 MMT CO2e in 2004[5] <u>and such reductions go far beyond the objective to return to 1990 levels</u>. Said another way, this level of reductions would be more than 183% of the estimated reduction from ARB's discreet early action GHG measure to "require existing trucks and trailers to be retrofitted with devices that reduce aerodynamic drag and rolling resistance." The GHG reductions from the business as usual base case in 2020 would be even greater, since the net reduction would grow with the projected increase in freight volume. These reductions can and should be estimated as part of ARB's Scoping Plan.

2. At the same time, the Draft Scoping Plan should recognize that some increases in rail GHG emissions can be beneficial system wide, provided the increase can be tied to a shift from truck to rail. During the period when ARB will be trying to reduce GHG emissions statewide to meet the 2020 limit, the total amount of goods that will need to be moved within the state is very likely to increase to serve an ever-expanding population. Thus, if the Scoping Plan is to succeed in achieving GHG reductions, <u>it will need to include policies that encourage the most efficient sources to move as many of the goods as possible</u>. As currently proposed, the

[2] AAR, "Freight Railroads and Greenhouse Gas Emissions" February 2008, page 1 http://www.aar.org/getFile.asp?File_id=466
[3] American Association of State Highway and Transportation Officials
[4] AASHTO Freight Rail Bottom Line Report 2003 http://freight.transportation.org/doc/ex_railreport.pdf
[5] This number probably includes some passenger rail emissions, but is overwhelmingly freight rail.

staff's short-term measure for a declining carbon footprint at intermodal rail yards conflicts with increasing the use of rail.[6]

3. The ARB's first Draft Scoping Plan should not propose measures applicable to specific rail yards (such as the concept of a declining carbon footprint for rail yards), nor should it contain measures for specific air basins or air districts. Since railroads are the most efficient and cleanest way to move goods throughout California and between the states, the ARB should not place a specific emissions cap on any aspect of railroad operations. From a system wide perspective, such limitations could have the unintended consequence to increased congestion of rail, truck and even ship activities that would increase GHG emissions in California. If allowed to persist, this type of increased congestion could lead to diversion of goods away from California and the kind of GHG "leakage" that AB 32 requires ARB to minimize.

4. ARB should propose only the control measures or strategies (long term and short term) that it has legal authority to impose. Measures that are preempted should not be proposed. For example, in 1995, Congress broadened the express preemption provision of the former Interstate Commerce Act. Congress made the Surface Transportation Board's jurisdiction over rail transportation "exclusive"[7] and defined "transportation" very broadly to include "a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use."[8]

5. The Draft Scoping Plan should not use a new and unreviewed methodology to estimate railroad emissions. The Draft Scoping plan should not contain any new locomotive inventories or methodologies for estimating locomotive emissions that the Railroads have not had a chance to review and comment on.[9]

In summary, it is counterproductive for ARB to consider including a carbon footprint measure for rail yards and ports in the first ARB Draft Scoping Plan. Such measures could ultimately lead to an increase in overall GHG emissions from freight movement on a total statewide basis by 2020. Rail yards are a critical part of a large, multi-modal, goods movement system and AB 32 requires that the Scoping Plan consider the entire system and minimize leakage. ARB should encourage the development of additional clean and efficient rail transport by 2020. ARB should not limit the amount of commerce that could be processed at or through specific rail yards. If

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[6] We have not yet received the details of this proposal. When we do, we can evaluate it more thoroughly from a technical, policy and legal perspective. Of course, AB 32 and its programs must comply with applicable federal laws, including the restrictions on state regulation of railroad operations under the Interstate Commerce Commission Termination Act (ICCTA).

[7] 49 U.S.C. § 10501(b)

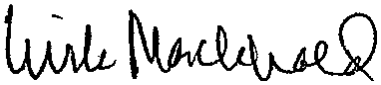
[8] 49 U.S.C. § 10102(9)

[9] More generally, AB 32 clearly authorizes and requires ARB to take a scientifically sound approach in the Scoping Plan to goods movement on system wide basis: "The state board shall evaluate the total potential costs and total potential economic and noneconomic benefits of the plan for reducing greenhouse gases to California's economy, environment, and public health, using the best available economic models, emission estimation techniques, and other scientific methods." (Cal. H&S Code §38561 (d))

rail yard GHG emissions are limited, then the only alternative to move goods would be to shift them to trucks – and ARB is not proposing to limit the carbon footprint for either truck fleet owners or trucking facilities. This approach would lead to an increase in GHG emissions statewide by 2020 and make it much harder and more costly to achieve the statewide GHG emission limit by 2020.

The Railroads look forward to discussing policy concerns with you at the earliest opportunity. You can reach me at 415-421-4213 x12 or Kirk@ceaconsulting.com if you have any questions.

Sincerely,



Kirk Marckwald
Association of American Railroads (AAR)

cc:
James Goldestene
Chuck Shulock
Harold Holmes
Lanny Schmid, UPRR
Mark Stehly, BNSF
Andrew Fox, PHL
Mike Rush, AAR