



September 20, 2011

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

SUBMITTAL OF COMMENTS

RE: Proposed Amendments to California's Mobile Cargo Handling Equipment at Ports and Intermodal Rail Yards Regulation

The Pacific Merchant Shipping Association (PMSA), a maritime trade association representing marine terminal operators and ocean carriers conducting trade at California ports, appreciates the work done by California Air Resources Board (CARB) staff in the development of these proposed amendments to the Cargo Handling Equipment Regulation. PMSA appreciates this opportunity to provide input to these important amendments which impact marine terminal operations. We provide our comments following the brief description provided by CARB.

1. Additional time for equipment with no VDECS available. Staff is considering allowing an additional two year compliance extension for in-use non-yard truck equipment for which there are currently no Verified Diesel Emission Control Strategies (VDECS) available. The regulation currently requires this in-use equipment to be repowered or replaced when the current two-year extension period expires.

When the original regulation was approved no one could foresee that available VDECS would not be available for all types of Cargo Handling Equipment. We appreciate that CARB staff has recognized this reality and is proposing this amendment to address this infrequent yet challenging situation. We would also suggest that CARB extend a "shake-down" period for new VDECS when they come onto the market. This would allow for additional time in order to work out any problems that may occur when new equipment is first put into service, as is frequently the case.

2. Low-use compliance extension. Staff is considering adding a two year compliance extension for equipment that operates for 200 hours per year or less. The number of extensions per fleet would be limited.

We greatly appreciate the intent of this amendment, and to make it most effective we would respectfully request a threshold higher than 200 hours. We believe for this amendment to be truly beneficial that the low-use exemption threshold should be set at a minimum of 400 hours. The principal purpose of

this change would be to enable terminal operators to maintain some older pieces of equipment as emergency back-ups.

3. Exempt equipment at low-throughput ports in NO_x-exempt areas not within 75 miles of an urban area. Staff is considering exempting equipment at ports with a throughput of less than one million tons per year (excluding petroleum products), that operate within a NO_x-exempt area, and are no closer than 75 miles to an urban area. The exempted equipment would become subject to the Off-Road Equipment Regulation.

Since we do not believe that this provision will have significant application to the marine terminal operations serviced by our members we have no comment.

4. Require CHE opacity testing and set maximum allowable levels. Staff is considering requiring annual testing and recording of exhaust gas opacity levels of all cargo handling equipment. If opacity levels are greater than maximum levels set per engine age and tier level, the engine must be pulled from service until repaired to meet maximum opacity levels. For CHE equipment retrofitted with VDECS, opacity of the exhaust gas upstream of the VDECS must be tested and recorded.

On behalf of our members we are compelled to object to an amendment to add an annual opacity testing requirement. Our industry is well aware that poor maintenance of both the engines and the exhaust system are prime contributors to opacity, so we must point out that we already have a high appreciation for the regular maintenance of this equipment as it is critical for them to perform the rigorous tasks required to move cargo on a marine terminal. Terminals simply cannot afford to have substandard equipment, as it adds additional costs in lost productivity and increase fuel consumption.

We are not aware of any existing opacity issue associated with the running of Cargo Handling Equipment that prompted CARB staff to propose this new opacity requirement or a problem with a lack of adequate equipment maintenance. Further, we are not aware of any other off-road category of vehicles that are subject to a similar requirement.

As a result, while annual opacity testing would place a huge burden on terminal operators to contract for and to provide time out-of-service for the equipment subject to the testing, it would yield few practical results. Since CARB already requires extensive annual reporting on the subject Cargo Handling Equipment this appears to be a requirement arbitrarily imposed with little explanation on the expected air quality benefits that would result. It also appears to be another situation where the deficiencies of the Original Equipment Manufacturers, and the after-market VDECS providers, would be unfairly passed onto the end-users of the equipment. If the OEMs and VDECS providers are not performing as warranted then those providers should be held responsible through the certification process. Only if it can be demonstrated that the owner or operator of the Cargo Handling Equipment has failed to properly maintain the equipment per the OEM or VDECS provider specification should they have the responsibility to provide this additional opacity testing to ensure that the equipment is performing per the original certification specifications.

At the very minimum we request that CARB staff do some statistical sampling of existing Cargo Handling Equipment to demonstrate the level of the opacity issue before moving forward with this amendment.

5. Allow demonstration of emissions equivalency. Staff is considering allowing Owners/operators to use engines that they can demonstrate achieve the applicable new or in-use emissions limits.

While we appreciate the potential flexibility that this amendment is trying to provide, the true test of that flexibility will be in the procedures and requirements necessary to demonstrate emissions equivalency.

6. Non-yard truck equipment transfers. Staff is considering allowing owner/operators to move their non-yard truck equipment from port-to-port or rail yard-to-rail yard to provide operational flexibility. Transfers could not be used to comply, or delay compliance, with the regulation. ARB would approve transfer requests, on a case-by-case basis, for equipment under the same ownership. May 10, 2011

We fully support this amendment.

7. Add a safety provision for VDECS. Staff is considering adding language specific to safety considerations to the current “No VDECS Available” extension. This language would specifically address visibility and space constraints in retrofitting equipment.

This is perhaps the single most important amendment that is being proposed. This will greatly increase certainty that there will be no future conflict with OSHA regulations.

8. Manufacturer delays for new equipment. Staff is considering allowing rental of equipment that does not meet current standards for up to six months if equipment meeting current standards are not available and the owner/operator can demonstrate need for the equipment. Rental equipment could only be one Tier lower than required engine standards (i.e. if Tier 4 engine standards are in place, only Tier 3 engines could be rented).

While our first inclination is to insist that if rental companies want to do business in California then they need to comply with all laws and regulations, this provision may provide some modest relief under extraordinary circumstances. In order to make this amendment truly effective and beneficial, we would respectfully suggest that the rental of needed equipment should be allowed until equipment meeting current standards is available, and not be limited to an arbitrary six-month period.

9. Warranty engine replacement. Staff is considering allowing the replacement of an engine under warranty with the same engine type in cases of premature engine failure, even when newer engine standards are in place.

We support this proposal. Although we would not be expected to replace an engine still under warranty very frequently, this provision will help to maintain a stable fleet of working equipment.

10. Treat Tier 4 Engines Certified to Alt PM Emissions Standards as Tier 3 Engines. Staff is considering requiring Tier 4 engines certified to meet Alt PM Standards to be retrofitted with highest level VDECS within one year of acquisition. The Alt PM emissions standards are essentially the same as Tier 3 PM emission standards and do not require the use of original engine manufacturer diesel particulate filters to meet them.

This must be transparent to the end user at the time of purchase. It is assumed that if a piece of equipment is available for sale in California then it must meet all California environmental requirements. If the point of sale is allowed to sell equipment that is not fully compliant with a CARB regulation then CARB should require that the seller is responsible for any future retrofit requirements at their cost and should compensate the buyer for any lost productivity. At the very least this would ensure full disclosure from the seller.

11. Add flexibility to extension for experimental diesel PM emissions control strategies. Staff is considering providing additional compliance flexibility by amending the current compliance extension for the use of experimental strategies for non-yard truck equipment. Staff is considering allowing CHE owners/operators to use this extension when it is needed to generate information for verification.

We support this proposal since it appears to benefit all parties: CARB, the manufacturer of the experimental control equipment, and the end user.

12. Clarify regulatory language: definition of port. Staff is proposing to clarify that diesel-fueled equipment within the boundaries of the port or intermodal rail yard, including those at non-port or non-intermodal rail yard related businesses, are subject to the regulation.

We support the language clarification.

PMSA appreciates the opportunity to comment on the proposed amendments to the Cargo Handling Equipment Regulation. If you have any questions or need clarification of our comments, please feel free to contact me at (562) 377-5677, or by e-mail at tgarrett@pmsaship.com.

Sincerely,



T.L. Garrett
Vice President