April 30, 2020

Chair Mary D. Nichols
California Air Resources Board
P.O. Box 2815
Sacramento, CA 95812

RE: Comments on 15-Day Changes to Proposed Control Measure for Ocean-Going Vessels At Berth

Dear Chair Nichols,

Thank you for the opportunity to provide additional input on the Proposed Control Measure for Ocean-Going Vessels At Berth, as the recent modifications per the Air Resources Board's direction on December 5, 2019, have been made available.

Over the years, the Port of San Diego (District) has pursued with the Air Resources Board many shared goals on a variety of fronts related to clean air. But having great goals is not enough. Time and funds are needed to fulfill our environmental mission, and absent correction, this proposed regulation will fall short of that goal due to changed circumstances related to COVID-19 and the impact on the District's finances.

The District is an early adopter of environmental solutions, and its initiatives and programs have demonstrated progress to clean the air, water, and land around and under San Diego Bay. The District recognizes the importance of air quality along the waterfront and has taken long, measurable strides to meet those goals with investments in clean technology and by working with the District's tenants and neighboring communities to continually modernize business operations for the 21st century.

A New Normal

Under normal circumstances, the timeline to deploy new electrification infrastructure at a marine terminal would verifiably range from 5-7 years. The scenarios detailed in the attached reference guide describe a realistic timeline for deploying shore power based on necessary engineering work and legal requirements imposed by existing California and federal law. However, due to the crippling effects of COVID-19 upon the District's operations and finances, the ability to move forward with many of these new requirements would be difficult at best. District operations have been buffeted by the onset of the pandemic this year with falling numbers of vessel visits, canceled cruises and conventions, and usually-full restaurants and hotels that now sit empty. With the collapse of the tourism economy, normal circumstances across the District are so profoundly and unrecognizably changed that completing the design, funding, and construction of a shore power project or innovative solution between now and 2024 is not feasible.

The financial fallout from this pandemic fell early on the District, particularly as it is a tourism-dependent public agency that collects no tax dollars for its operations, improvements, and other public benefits that the District provides the region. Yet the District and other critical infrastructure partners across California and the U.S. have stayed open, working tirelessly to meet the needs of our neighbors at home and in hospitals across the country, and pivoted focus to maintain essential operations during this critical time.

COVID-19 has been a gamechanger for the District, and a devastating blow to its work as a proactive environmental leader, stretching its resources to the limit. The District – itself a self-funded public agency and not a municipal department -- has declared an emergency and is currently experiencing massive shortfalls in every major revenue category, with revenue from hotels, restaurants, retail, and attractions down nearly 50% from March through June of 2020, and other categories down as much as 80%.

Even though the District built a responsible rainy-day reserve and has begun the difficult process of reducing expenses, it faces significant financial headwinds as it expects our visitor-serving industries –

which were among the first hit and last to recover – to suffer through the rest of the 2020 calendar year and into the future.

The bare-bones task of maintaining basic operations in the face of COVID-19 has greatly scaled back the District's options and fiscal flexibility. Consequently, the District has adopted an emergency budget that reduces expenses yet doing so without severely impacting its environmental responsibilities. While many of those initiatives must be delayed until revenue is available, work on the District's comprehensive new Maritime Clean Air Strategy is among the priorities that will – as of this writing – still be funded, as well as the full-time workforce of law enforcement, environmental specialists, and those who oversee care of the tidelands' precious natural resources.

A Recalibrated Rule

As a result of ongoing impacts of COVID-19, the economic assumptions used in the Air Resources Board's initial analysis have completely changed and no longer apply. This is a fixable problem. An accurate baseline is required for any regulation to be established.

Due to economic uncertainty about the pandemic's worsening effects, no one yet knows how deep, how long, or how severe this recession will be. Until the economy grows out of this recession and fixes the damage that has been done, rosy projections simply do not match reality. Owing to that uncertainty, target dates for compliance cannot be credibly set without reliable economic data to back them up. The District suggests that milestones, thresholds, or other benchmarks – perhaps a trigger when statewide gross domestic product returns to 90% of what it was before the economy burst – would be more objective and reliable.

Emissions reductions are needed to achieve environmental standards, and given the District's weakened financial situation, economic recovery is required for revenue to fund the capital investments that clean the air. Yet as it is written, the regulation forces a binary choice instead of setting a balance – such as a slowly graduated approach paced to increased vessel visits – and places the District in an impossible position of either breaking trust with the hundreds of workers employed in waterfront industries or complying with strict requirements targeted at emissions that no longer exist.

As the District weathers the crisis as best it can, it does so with the goal of adapting to a new normal, knowing that everyone at the local and state level must work together. This regulation has been under development for a long time, and if it is to succeed in San Diego, a sober recalibration recognizing the financial toll of COVID-19 is required.

Time for State Investment

In a recent report to the State Senate, the Legislative Analyst's Office acknowledged, "Job loss and abrupt halting of economic activity make it clear that the economy has entered a recession." Though the District's appetite for aggressive and strategic environmental goals remains, economic reality sets parameters on the District's ability to pursue them. The very definition of "sustainable" is tethered to ongoing availability of resources, and this is true in both an environmental and economic sense.

Current and credible financial projections do not support the Air Resources Board's basis for this rule. As the Department of Finance commented on the Standardized Regulatory Impact Analysis, "… because new facilities are required for compliance, these capital costs may not be spread evenly across the effective period of the regulation as (C)ARB assumes but will depend on the ability of parties to finance up-front costs." The Air Resources Board's written response, that "the Proposed Regulation would result in indirect costs to individuals and small businesses to the extent that compliance costs are passed through to the ultimate consumers of cargo and cruise vessel passengers," is not practical considering the shut-down of the cruise industry, prolonged travel/gathering restrictions, and chilling impacts of the recession on demand for imported goods.

Since the federal Centers for Disease Control and Prevention issued a No-Sail Order on March 13, 2020, no cruise ships will be visiting U.S. ports until it is discontinued. In addition, cargo volumes are plunging as production and manufacturing around the globe slows down and consumer demand shrinks, which further impacts California jobs. And according to the California Travel Association, California travel spending dropped to $345 million earlier this month, down by $2.6 billion compared to the same time in 2019 -- an 88% drop. Travel spending losses in the state have totaled $11.7 billion since March 1, resulting in a loss of $561 million in state and local tax revenue. Those are impacts that no one anticipated but have radically changed the District's financial outlook.

Optimistically, the District has put every available resource forward to ensure continued regulatory compliance with each regulation and now needs to the Air Resources Board to support us in overcoming the hurdles to meet the challenge.

A Shared Path Forward

The new At-Berth regulation is an important one that should be given full and proper attention. The Air Resources Board can act now to match the District's zeal and mitigate the effects of the economic crisis upon environmental progress. To realize our shared objectives, the Air Resources Board's positive intervention – its partnership -- is necessary.

How is the District to protect local jobs on the working waterfront without the Air Resources Board's partnership? To accurately reflect the effects of the national and statewide emergency as it evolves, the proposed regulation will only benefit from a diligent assessment of COVID-19 impacts. Emissions remain low already while the economy is shut down, which will give the Air Resources Board time to develop funding solutions that equip progress, especially for the heavy upfront investments required for large-scale capital projects.

Without incentive funding or time to deploy solutions, how can the District act alone and unilaterally produce solutions within the time allotted? The District must comply with California state law, such as the California Environmental Quality Act, and permitting work with the federal Army Corps of Engineers, to name just two signicant external factors that belong on every engineering timeline of solutions. And at a time when the whole of government is racing assist employers and industries with massive financial infusions to stave off further economic breakdown, this regulation proposes to place incentive funding out of reach. The District would hope the regulation's innovative concepts provision, which eliminates environmental pilot programs and demonstration projects, can be improved to remove the prohibition on public funds, and that the compliance structure and definitions would reflect the realities of a phased process governed by factors outside of any port's control.

What alternative means of compliance are allowed? According to the Air Resources Board's analysis, alternative mobile control technologies – though not approved by the Air Resources Board nor demonstrated to be feasible – may reduce criteria pollutants while yielding increases in greenhouse gases and therefore undermine the District's own aggressive climate action goals. It assumes these solutions require less time to implement, yet permanent technologies are restricted to the same time frame for compliance and lack the 5-7 years that are necessary to execute a capital improvement project. Would an extension for permanent solutions be possible? If a port can show intent through a memorandum of understanding and an implementation plan, is there a grace period for the design and construction of an innovative concept? Can a port advance multiple solutions in phases if the result is compliance or beyond? Within the options provided, what can a port do to move forward on implementation while still maintaining compliance?

Conclusion

A prescription must have a plan. Now is the time to adapt the rule to a wholly changed reality and recognize that the District will only meet our shared goals if we do it together. COVID-19 is showing us that the District needs the Air Resources Board to stand with us and not set it up to fail. The stakes are too high to dare otherwise.

As a result of the COVID-19 downturn, the District will have already experienced by June 30 a budget shortfall of $30 million and anticipates losses twice again as large in Fiscal Year 2021 -- a potential revenue shortfall approximately $70-95 million in total. The revenues that have disappeared are the same revenues the District has relied upon to do the projects to further our environmental goals.

COVID-19 has crushed the economy and drained the District's revenues as a self-sustaining public agency. Money or time – or an economic recovery – is needed to facilitate compliance amid this crisis. There is no other way. The District was one of the first ports to set visionary goals for its environmental stewardship and has built that record over the years.

From the time the District first adopted its Climate Action Plan – one of the first ports in the country to do so – to being one of the first to install shore power at its cruise terminal, to being the first in the state to develop an Energy Management Plan, to its progressive and forward-thinking environmental impact report for the redevelopment of one of its two cargo terminals, it has acted strategically to build infrastructure to modernize port operations for the future and set the District on a good track for continuing to improve the way it responsibly fulfills its mission and upholds the public good.

A good, well-crafted regulation is in everyone's interest, and that is why the District wants to see the new At-Berth Regulation work and work well. In this economic storm, a firm partnership with the Air Resources Board is critical to success in meeting these environmental goals and make a difference for generations to come.

As the Board considers the At-Berth Regulation, the District encourages a sober assessment of the severe situation dealt us by COVID-19. The ends require means to achieve them, and nothing is lost by recalibrating the regulation to this new reality. In fact, only then can it overcome this setback of COVID-19 and succeed. And our hand of partnership remains outstretched, for we cannot do this alone, especially now as we face the ravages of an unprecedented global public health and economic crisis. Thank you for your consideration and assistance.

Sincerely,

Job Nelson
Chief Policy Strategist
Port of San Diego