PACIFIC MERCHANT SHIPPING ASSOCIATION

May 1, 2020

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California Air Resources Board
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https://www.arb.ca.gov/lispub/comm/bcsubform.php?listname=ogvatberth2019&comm_period=A

Subject: PMSA Comments on the Supplemental 15-Day Notice for the At Berth Regulation and Related Environmental Assessment

PMSA appreciates the opportunity to comment on the proposed At Berth Regulation and Supplemental 15-Day Notice. The following comments are inclusive of the Supplemental 15-Day Notice as well as the Initial Statement of Reasons, Environmental Assessment, Standardized Regulatory Impact Analysis, and Supporting Regulatory documents.

PMSA is submitting extensive comments on behalf of its member companies which are providing critical and essential services in the midst of the global COVID-19 pandemic. However, we are concerned that this rulemaking process is proceeding during this crisis as our member companies are engaged in responding to this crisis by developing and *implementing* emergency procedures to address active coronavirus cases and prevent further infections, ensuring that their staff and communities are safe, and maintaining the supply chains that allow the U.S. and international response efforts to be executed and our communities to successfully shelter-in-place. As a result, meaningful public participation in this rulemaking is significantly impaired as the ability of the impacted and regulated industry to review, understand, and comment on proposed regulations is severely constrained at this time.

In a previous letter on March 20, 2020, industry stakeholders including PMSA reached out to the California Air Resources Board (CARB) and Cal/EPA outlining the impacts of the crisis on our industries and requesting consideration of a pause in this rulemaking during the crisis. No specific response to this letter was ever received. PMSA believes that the transformative effects of this crisis as laid out in this letter rise to the level of needing a pause and reassessment.

Material and Significant Changes in Economic and Environmental Circumstances
The scale of the current crisis is unprecedented. Every key economic assumption in the CARB estimate of the proposed regulation has been dramatically affected by COVID-19 and the ensuing shelter-in-place orders. IHS Markit economists over the course of one week in March lowered their projection for 2020 US real GDP growth from a decline of 1.7 percent to a decline of 5.4 percent.[1] The impact to the

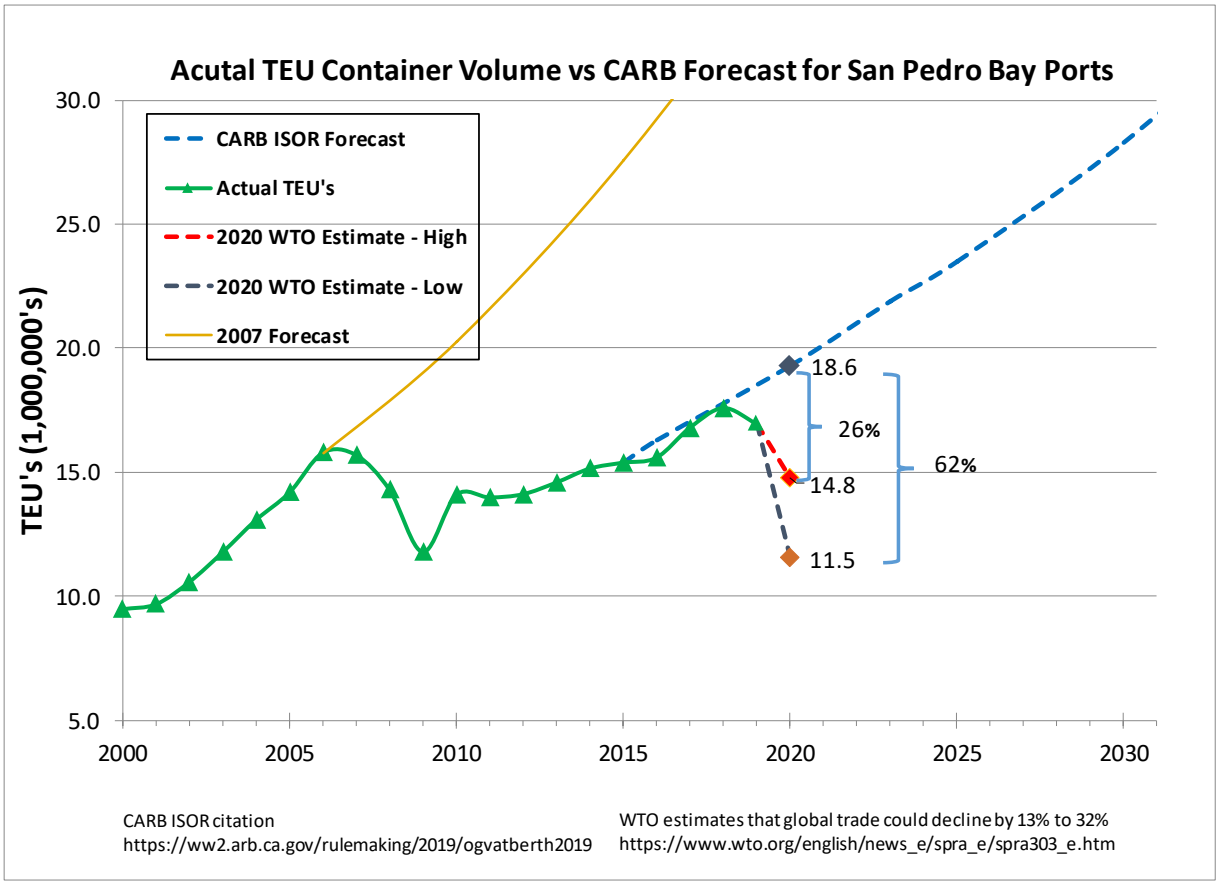
[1] https://www.joc.com/maritime-news/container-lines/container-industry-fallout-coronavirus-linger-2021_20200407.html

maritime industry is even larger. The World Trade Organization (WTO) has estimated that global trade could decline up to 32% this year.[2] Consequently, the analyses on which this rule is based are out of date and no longer valid.

Previously Faulty Assumptions On Containership Growth Rates are Now Even More Facially Incorrect
The underlying ISOR/SRIA analysis, upon which the 15-day Notice relies as well, is predicated on strong growth assumptions based on a number of forecasts. Prior to the current crisis, those forecasts were in doubt. For example, the analysis assumes that from 2016 (the inventory base year) through 2020, cargo at the ports of Long Beach and Los Angeles would grow 4.5% per year. Last year (before the current crisis), cargo throughput at the two ports declined 3.3%.

Since the crisis, the decline has accelerated, with year-over-year declines in January (-5.1%), February (-16.9%), and March (-19.7%). Before even considering the rest of the year, according to SeaIntelligence, 435 sailings have already been eliminated due to the COVID-19 crisis,[3] the current market upheaval means the emissions inventory contained in the ISOR, SRIA, and the 15-day Notice is wrong. That gap only grows if the rest of 2020 is forecast based on WTO projections, as shown in the figure below for the San Pedro Bay Ports:

[2] https://www.wto.org/english/news_e/spra_e/spra303_e.htm
[3] https://www.seatrade-maritime.com/containers/container-line-blank-sailings-increase-435



By the end of this year, the baseline forecast used in the ISOR will overestimate cargo volumes by between 26% and 62%.

While everyone hopes that the economic and cargo disruptions posed by this unprecedented crisis are short-lived and temporal, there is no enunciated or clear justification for a theory that cargo volumes will quickly return to normal. To the contrary our experience and the historic precedent is that we are facing a long climb out. Prior to the Financial Crisis, the 2007 Forecast estimated that cargo volumes would grow to 65 million TEU by 2030. Following the decline from the last recession, cargo never recovered to their pre-recession levels of growth and it took a decade just to re-establish pre-recession volumes (see chart above).

Similarly, even if the pandemic itself is temporal as we all hope, the impact of the crisis is not likely to be short-lived. A new McKinsey study estimates that recovery in the USA could take until 2023.[4] With each year, the gap between the ISOR forecast and reality will grow larger, further distorting the analyses predicated on the forecast. Lloyd's List reported that in the view of BIMCO's chief shipping analyst, any recovery in container shipping will come from an extremely low base and that the global health crisis had "ruined every forecast and projection" for the sector. The report continued that "BIMCO expects no V-shaped recovery 'nor any other letter in that game', but a slow and gradual return to what will become a 'new normal'." [5]

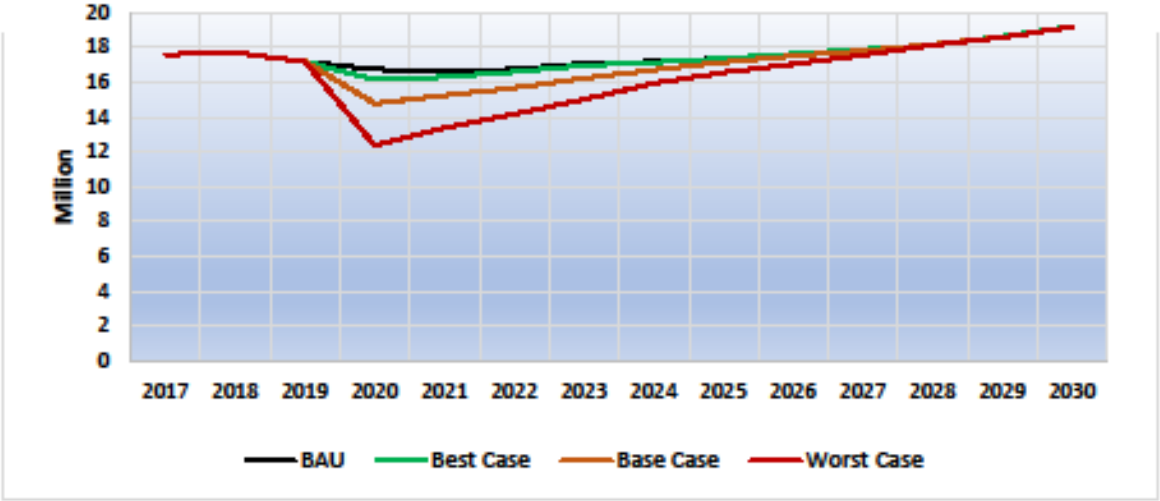
Whatever the next decade holds for cargo growth, the only thing that is certain is that it is not represented by the strong growth forecast contained in the ISOR. The estimates of benefits, emissions estimates, costs, cost-effectiveness, and health impacts, which presume the rate of growth contained in the ISOR, are now no longer valid. Even if growth were to immediately resume at levels assumed in the ISOR, cargo volumes and resulting activity will be millions of containers off from the cargo volume estimate.

Ro/Ros

The crisis is also forecast to impact auto sales in this country and globally. Decreased auto sales will translate into reduced Ro/Ro activity. A forecast by Automotive from Ultima Media[6] indicates that it will take most of this decade for auto sales to return to their pre-crisis levels. The base case scenario has volumes declining from 2019 by 14%. In a worst-case scenario, volume declines would plunge 28% from 2019 levels.

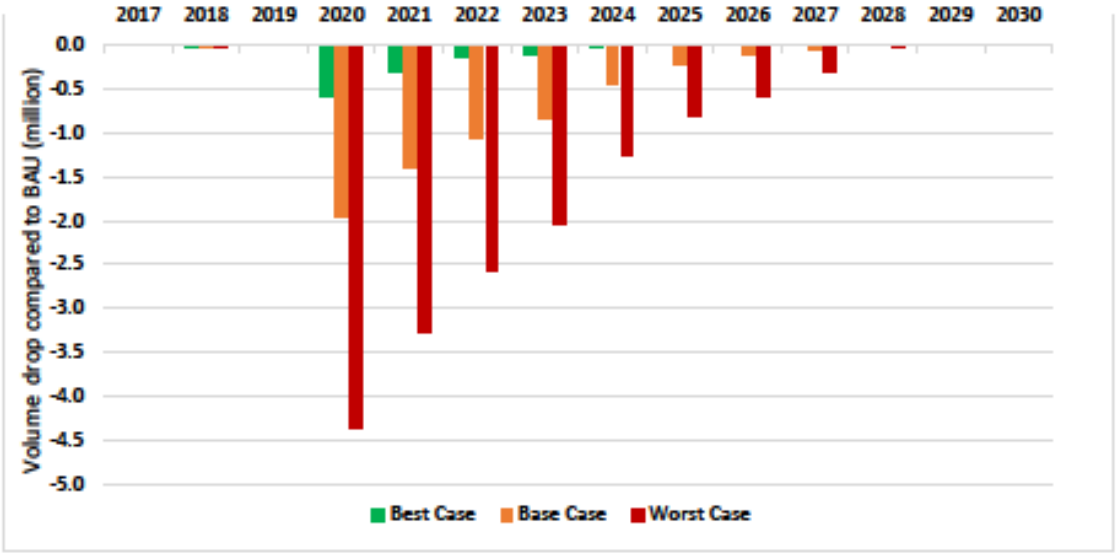
[4] https://www.mckinsey.com/~/media/mckinsey/business%20functions/risk/our%20insights/covid%2019%20implications%20for%20business/covid%2019%20march%2025/covid-19-facts-and-insights-march-25-v3.ashx
[5] https://lloydslist.maritimeintelligence.informa.com/LL1132152/No-quick-fix-for-box-shipping
[6] https://www.automotivemanufacturingsolutions.com/insight/global-vehicle-demand-forecast-2020-2030-the-drastic-impact-of-the-coronavirus-crisis/40396.article

US Automotive Sales Volume Forecast Under 3 Scenarios 2017-2030 (units)



Source: Automotive from Ultima Media

US Automotive Sales Volume Drop Compared to BAU Under 3 Scenarios 2017-2030 (units)



Source: Automotive from Ultima Media

As was the case for other vessel categories, the forecast upon which the Ro/Ro analysis was conducted is no longer valid. While the Automotive from Ultima Media forecast auto sales slightly growing by the end of the decade, the proposed rule is based on a growth rate that would see Ro/Ro activity 83.5% higher than 2016 levels in the ports Los Angeles and Long Beach by 2030 and 31.9% higher at the Port of Hueneme[7]. These numbers are not realistic or a reasonably foreseeable outcome of the current economic climate.

In order to be meaningful, accurate, and facilitate CARB's stated policy goals, the ISOR must be revised to take into account these effects and their material and significant impacts.

CARB is already well aware of the fact that the economics of the current pandemic are material to the State of California, and must act consistently with the state government's stated evaluation of our new economic reality. On April 10, the California Department of Finance (DOF) sent a budget letter to the Legislature alerting them to the dramatic impact that the COVID-19 pandemic is having on the California economy and state budget[8]. In the letter, DOF indicated that the effects of the downturn will be felt immediately, that the California unemployment rate could peak at a rate higher than the Great Recession of 2008, and that economic softness could persist into 2020-21 and additional years depending on the pace of recovery to local, state, and national economies. It referenced a multi-year recession alternative included in its January budget, and indicated that actual increases in unemployment would be much larger.

CARB also should maintain DOF consistency when addressing material and significant changes in its ISOR, SRIA, and 15-Day Notice by noting the California's Legislative Analyst's Office (LAO) description of the scope of the economic change that the State is witnessing and the wide-ranging variables and uncertainty associated with the rates, scope, and scale of a potential recovery.[9] In a document titled "Preliminary Assessment of the Economic Impact of COVID-19" released on April 16, 2020, the LAO declared that "Job Loss and Abrupt Halting of Economic Activity Make It Clear That We Have Entered a Recession". This assessment was initially confirmed with news reports of 1st Quarter GDP results[10].

Analyses Must Be Revised in Light of New Data

CARB cannot proceed now without knowingly ignoring material and significant changes to the economic and environmental impact data upon which all of its rulemaking and CEQA clearance documents rely. Therefore, proceeding now, without revising its analyses in light of new data would be untenable. PMSA does not request that CARB cease work on amendments to the At Beth regulation, as some have unfortunately characterized these comments; to the contrary, we are asking that CARB program staff

[7] https://ww3.arb.ca.gov/regact/2019/ogvatberth2019/apph.pdf
[8] http://dof.ca.gov/budget/COVID-19/documents/4-10-20_COVID-19_Interim_Fiscal_Update_JLBC_Letter.pdf
[9] https://lao.ca.gov/handouts/FO/2020/Preliminary-Assessment-of-the-Economic-Impact-of-COVID-19-041620.pdf
[10] https://www.latimes.com/politics/story/2020-04-29/u-s-economy-in-clear-sign-of-recession-shrinks-4-8-in-first-quarter-due-to-coronavirus

work closely with stakeholders to ensure that rulemaking proceed properly. We recommend that the Board direct its staff to proceed in the following order: First, CARB should pause the rulemaking and begin working with the port authorities to develop new cargo volume and cruise visits projections that will serve as the basis for re-analysis of the proposed rule. Second, CARB should revise its assumptions based on the comments previously submitted by stakeholders that demonstrate costs have been underestimated and emission reductions and health benefits have been overestimated. Finally, CARB should re-evaluate baseline emissions, proposed emission reductions, health benefits, costs, and cost-effectiveness based on a revised forecast and assumptions.

Previous Comments Unaddressed and Incorporates Previous Comments by Reference

Independent of the material and significant crisis-related changes noted above, PMSA is concerned that our comments on the Initial Statement of Reasons (ISOR) were not addressed or considered in the 15-Day Notice. Extensive technical comments on cost, infrastructure, and feasibility were submitted with supporting information. PMSA incorporates by reference our comment letter, dated December 9, 2020, on the ISOR[11]. Accordingly, we request that CARB staff review and respond to all industry comments prior to Board consideration of the proposed regulation.

At Berth Regulation Should Be Bifurcated

The new proposed regulatory framework proposes a single structure for the regulation of disparate vessel types despite the persistence of the same disparities which existed at the time of the initial rulemaking.

Under the existing rule, container, cruise, and refrigerated vessels have been able to successfully comply through a fleet average approach that encourages long-term planning and incentivizes overcompliance in order to manage trade uncertainty. Carriers voluntarily over comply in order to preserve flexibility to accommodate trade surges, vessel redeployments, or unexpected equipment repair/maintenance. The proposed structure would eliminate any incentive to over comply and encourage carriers and terminals to exhaust available Vessel Incident Event (VIE)/Terminal Incent Event (TIE) allowances to reduce cost.

CARB should maintain a fleet average approach for the existing regulated fleet in order to ensure its continued success and consider the creation of a separate regulatory structure for any expansion fleets.

The preservation of the existing regulatory structure for currently regulated fleets and consideration of a new regulation for expansion to new fleets can be achieved in a manner which does not impact any projected emissions reductions. It is simply an acknowledgment of the original bifurcation by CARB of vessel fleets over a decade ago and the continued investments and emissions reductions progress made by the currently regulated fleets in expectation of the durability and continuation of the current regulatory program for the foreseeable future.

[11] https://www.arb.ca.gov/lists/com-attach/61-ogvatberth2019-B2tQMwZkAAhSyM0d.pdf

During the December 5th CARB hearing, Board members directed staff to investigate bifurcation of the proposed rule, recognizing the disparate nature of the fleets the proposed rule attempts to regulate. The 15-Day Notice does not provide that any such investigation occurred or discuss why CARB staff remains opposed to proceeding with amendments to the current regulation for currently regulated vessel fleets in order to achieve their rulemaking goals. Accordingly, PMSA again requests that the Proposed At Berth Control Measure be bifurcated, consistent with Board direction, into one set of amendments for the existing fleet regulations and another entirely new regulation which is exclusively applicable to expansion fleets.

2021 Implementation Date is Infeasible and Accelerated Deadlines are Unachievable

As was demonstrated in multiple comment letters, the original deadlines were unachievable. The rule demonstrated this absurdity by requiring facility plans to ensure compliance six months after compliance is required. The only engineering analysis in the record was submitted by the ports of Long Beach and Los Angeles that demonstrated, based on actual past experience, that more time was necessary to implement the proposed rule. No engineering analysis was conducted by CARB and no information has been made part of the record to support the accelerated deadlines proposed in the 15-Day Notice. The accelerated deadlines for tanker and Ro/Ro vessels cannot be achieved.

It is also unfair to the existing regulated fleets to provide essentially no transition period from the current regulatory structure into the new proposed regulatory structure. Given the COVID-19 timeline and impacts described above, along with delays to the adoption of the rule by CARB and OAL resulting from the crisis and additional time built into the rulemaking calendar, prior infeasibility concerns regarding the potential implementation date of 2021 are now even more acute.

US EPA Waiver Requirements Also Render 2021 Implementation Impossible

One of the primary reasons to amend the current rule (as opposed to creating an entirely new regulation in its stead) is to maintain the effectiveness of the existing regulation, which already has a waiver from the United States Environmental Protection Agency (USEPA) granted under §209(e)(2) of the Clean Air Act in 2011. CARB sought and was granted the waiver from USEPA as the existing At Berth regulations implement emissions standards applicable to the running of auxiliary engines while at berth in California's ports. (76 FR 77515) This waiver was granted after previous auxiliary engine emissions standards were determined to be unenforceable by ARB without the prior issuance of a US EPA §209(e)(2) waiver and after objection to the waiver by PMSA. See *Pacific Merchant Shipping Association v. Goldstene,* 517 F.3d 1108 (9th Cir., 2008).

Now that the industry has invested an estimated $1.8 billion in the equipment and infrastructure necessary to make the current shore power regulation a workable framework for vessel and port operations in California, PMSA believes that the tremendous investment in the existing emissions reductions infrastructure on vessels, and on shore by ocean carriers, marine terminals, and ports under the existing waiver needs to be protected and preserved. The US EPA waiver process is one component of the Clean Air Act that ensures the preservation of the current and previously adopted regulatory

structure in a uniform manner nationwide, as an alternative emissions standard over and above or in addition to a US EPA standard, and that the adoption or change to any existing uniform rule is completed in the best interests of the currently regulated vessel fleets, CARB, and the entire United States.

Preservation of the current rule and existing waiver by continuing the existing regulation and bifurcation of the amendment process into currently regulated fleets and currently non-regulated fleets also maintains the clear and unambiguous legal status of the existing emissions standards under the current law, avoids any disputes over the authority of ARB to enforce emissions standards on vessels at berth upon the effective date for new amendments, and takes advantage of the existing waiver in order to foster continued national standardization of shore power rules for vessels which have already made a substantial investment in the retrofits necessary to comply.

By contrast, the proposed rulemaking abandons the current rule and the current waiver, and instead promulgates a new emissions standard for not just the newly proposed regulated vessel categories but also for existing regulated vessel categories, ports, and marine terminals.

Regulations for vessels at berth, including specifically any newly promulgated emissions standards, are legally unenforceable without the provision of a new waiver. Such a waiver request from CARB might not even be properly before the USEPA for consideration by January 1, 2021, and it is not reasonable to expect that one would be granted in that time period. PMSA views the elimination of the current rule and existing waiver as an unnecessary complication that should be studiously avoided. We would instead ask that ARB keep the current rule for the currently regulated fleets and make amendments to this existing rule which are either consistent with the existing waiver or which could be addressed with US EPA within the context of the existing waiver via future amendment.

If for no other reason than to maintain legal clarity and consistency within the At Berth program, CARB should take every step possible to ensure that the existing US EPA waiver remains in place and controls the lawful extent of CARB enforcement until a new waiver is granted.

Proposed Changes Are Not Consistent with "15-Day Change" Requirements
Accelerating deadlines in the rule by 33% for tankers and 25% for Ro/Ros with no evidence to support the feasibility of the proposal is not a reasonably foreseeable change to the proposed regulation. As a result, these changes are not appropriate for a "15-Day Change" notice. The changes substantially alter the impact and implementation of the proposed rule. CARB staff should recirculate the proposed changes as a "30-Day Change" notice.

The purpose of the "15-Day Change" notice is to provide flexibility for *de minimis* changes that do not require substantial new analysis. The proposed changes have required concurrent changes to every element of the analysis: costs, emissions inventory, and health benefits. Even worse, the impact of an

accelerated schedule on costs are not disclosed, eliminating the opportunity for stakeholders to provide comment on the change.

De Facto Establishment of a New Ambient Air Quality Standard

The 15-Day changes proposed for the At-Berth Regulation include an acceleration of health benefits to the public, which in turn purportedly justify increased costs. However, those health benefits are based, in part, on an "Incidences per Ton" analysis to determine reduced mortality and morbidity outcomes. This is the use of a new air quality standard and a deviation established State and National Ambient Air Quality Standards and/or reduction of risk from an identified Toxic Air Contaminant.

The use of standard metrics has long been established through public processes that set standards for ambient air quality standards or identifying the toxicity of specific contaminants. Through a public process, CARB must provide the scientific basis for public scrutiny that the agency will later rely upon to establish new rules that move the State toward achieving the air quality standards or reducing risk exposure.

The analyses contained in the ISOR and 15-Day changes has deviated from this long-standing approach. In addition to the traditional analysis of risk reduction, the document presents the morbidity and mortality benefits of the proposed regulation as a result of a reduction in particulate matter through the "Incidents per Ton" analyses. The analyses purport health benefits even in areas that are in attainment for the health-protective ambient PM standards. However, CARB has not established through any public process the basis of these analyses. There has been no public process to determine at what concentrations health impacts occur or if there is an appropriate standard, if any, that the State should be seeking to achieve.

The analyses imply that there is no ambient concentration of particulate matter that does not result in health impacts. In essence, the Health Analyses is establishing a new *de facto* ambient particulate matter standard of zero parts per billion. By contrast, ambient air quality standards, identification of toxic air contaminants, and even the framework of health risk analyses have been subject to extensive public review.

The use of a new standard that has not been subject to a public review process is fundamentally an underground regulation. CARB is able to provide justification for new regulations without subjecting the *de facto* standard implied by the analyses to its own broad public review. CARB should immediately remove the "Incidents per Ton" as a basis for the proposed rule. The approach itself has not gone through its own extensive public review; it should not be relied upon as justification for the draft regulatory concept.

CAECS Responsibilities

PMSA appreciates the changes that make clearer the responsibilities of CARB approved emission control strategies (CAECS) operators. However, the revisions do not go far enough in laying out clear lines of

responsibility. For instance, Table 6 still identifies Terminal and Vessel as potentially responsible for CAECS failure, in addition to the CAECS operator. Only the CAECS operator should be responsible for failure of a CAECS system. In addition, Section 93130.15 makes clear that CAECS are eligible for use of the Remediation Fund, but Section 93130.12 only requires a CAECS operator to remediate excess emissions if excess emissions occur beyond three days. Under the proposed language, it is unclear which party is responsible for the first three days of excess emissions or if emissions must be remediated for connection delays. This ambiguity must be corrected to make clear that the CAECS operator is responsible for all excess emissions from performance in terms of arrival, connection, and departure and performance in terms of emissions control.

Liquid Bulk Vessels Must Be Regulated Equitably and Consistently Across Proposed Rules

CARB is attempting to promulgate multiple rules impacting vessel operations simultaneously, but the proposed rules are internally inconsistent. With respect to the proposed regulatory framework for the proposed At Berth Regulation and the proposed Harbor Craft Regulation, the results of these two rules will bifurcate vessels serving the same trades resulting in inequitable and inconsistent regulation. Both traditional liquid bulk vessels and articulated tug barges (ATBs), which are ocean-going tanker vessels, are proposed to be regulated substantially differently. Both vessel types move liquid bulk cargoes, ply interstate and international trade lanes, and operate substantially outside California waters. Both vessels should be treated similarly under an air quality regulatory framework. In fact, ATBs meet the CARB definition of an ocean-going vessel and should be regulated as such. Nonetheless, CARB has proposed to treat the vessel categories differently and without providing evidence why ATBs should be regulated differently. CARB should revise the proposal and not arbitrarily exclude ATBs under the definition of ocean-going vessels.

Increased Costs of Proposed 15-Day Changes Not Disclosed, Detailed, or Analyzed

The 15-Day Changes propose accelerating the schedules of compliance for vessels which increases costs in multiple ways. However, the "15-Day Change" notice provides no detail on how costs are increased. There is only a vague statement that total program costs have increased by $210 million. It attributes increased costs to the accelerated schedule and to the inclusion of the Innovative Concept section but does not identify what those costs are or how they arise. The nature and mix of costs are important to understanding the economic impact. As the Department of Finance (DOF) pointed out in its comment on the Standardized Regulatory Impact Assessment (SRIA):

> "the SRIA must include non-annualized capital costs. Capital costs are almost half of the direct costs of the package. However, because new facilities are required for compliance, these capital costs may not be spread evenly across the effective period of the regulation as ARB assumes, but will depend on the ability of parties to finance up-front costs. The SRIA should disclose the cost of capital construction to the year the money will actually be spent, as well as the assumed amortization."

The proposed acceleration of the deadline compounds the issue that DOF identified. Without detailed information on the increased costs, it is impossible to assess and provide impacts for those increased costs.

Remediation Fund

The language restricting the use of Remediation Funds in Section 93130.16 is so broad as to potentially bar any conceivable project and must be revised. The restriction on projects identified in AB 617 Community Emission Reduction Programs (CERP) is inappropriate on two counts. CERPs are not enforceable and there is no guarantee that projects identified in CERPs will be initiated. As a result, CERPs actually outline projects that should be prioritized for funding from sources such as the At Berth Remediation Fund. In addition, CERPs represent communities that the State has identified for new investment. The proposed language would functionally cut off identified communities from a funding source.

The prohibitive language is also too broad on legal requirements and Memoranda for Understanding (MOUs). All projects that can possibly be envisioned for use under the Remediation Fund will be subject to some legal agreement on implementation. Agencies establish MOUs specifically to identify potential emission reduction opportunities and facilitate access to various funding mechanisms. Mitigation measures are often subject to constraints on available funding. All agreements and MOUs are contracts that result in enforceable legal requirements. Without these tools, the projects that CARB envisions cannot be completed.

PMSA proposes that the Remediation Fund have the same limitation that CARB always uses for incentive programs that the projects result in emission reductions that are real, quantifiable, verifiable, enforceable, and surplus. Each of these elements have a long history in delivering emission reductions to local communities. The addition of other language only serves to obscure what projects could be eligible and would likely result in counter-productive restrictions on the use of funds in port communities.

Innovative Concepts

Another major proposed change would allow the use of certain "Innovative Concepts" (IC) to meet compliance obligations. CARB staff present the "Innovative Concepts" provisions as an alternative compliance pathway, but as currently written the proposal would fail to serve that purpose. A number of changes are necessary in order for the IC section to be workable.

- A fleet averaging concept should be a defined path within the IC section. Fleet averaging, as a program whose parameters are known, should not be subject to unnecessary restrictions for new concepts. Given the known success of fleet averaging to reduce emissions, it is not necessary to create uncertainty by having a three-year term with extension subject to uncertain approval.

- There should not be a set term for IC plans. As written, the IC section requires regulated parties to repeatedly apply for and receive CARB approval to use an "Innovative Concept" for limited three-year terms. Different concepts may require different terms in order to recoup any necessary investment. A one-size-fits-all approach is unwarranted and unnecessary. The term for any IC can be determined individually.

- While ICs must be "surplus" at the time of creation, CARB could revoke or decline to renew approval if the emission reduction became subject to regulation at a future date or by any CARB-approved AB 617 Community Emission Reduction Plan. The IC section should be modified to allow IC reductions without this limitation.

- Limiting the location of IC emissions reductions only to "adjacent" communities and distances no greater than 3 nautical miles may have unintended consequences. Neither "adjacent" nor "community" are defined in the Proposed Regulation, so it is unclear how close an area would need to be in order to be deemed "adjacent," and where the boundaries of that area would end. The IC section should be modified to encourage any project (adjacent or not) that would benefit the port and terminal communities.

- The IC section sets a deadline for submitting a proposal. This implies that ICs will not be considered after 2021. We do not believe it was the intention of staff to limit development of IC to the first six to twelve months of the proposed rule's implementation. The deadline should be removed and replaced with a process for IC plan review at any date such plans are submitted in the future.

- The prohibition on public funding for ICs is too broad. Funding may come from different sources, including federal, other states, or other nations. In addition, such a prohibition would exclude demonstration projects. Fleets that are likely to engage in ICs, including fleet averaging, are also likely to participate in demonstration projects sought by CARB or other air quality agencies. Being innovative should not prohibit technology advancement.

- The requirement that "if no environmental review is determined to be required by a local lead agency, the applicant must submit documentation from the local lead agency explaining environmental review is not required" does not make sense in the context of the California Environmental Quality Act (CEQA). It is not normal for an agency to affirmatively state it is not taking action under CEQA; it simply does not act. The environmental review provision should be limited to the review of CARB's action, if any. If CARB determines environmental review is necessary, it must conduct that review unless another lead agency is identified. CEQA already contains provisions for addressing conflicts between multiple lead agencies. If CARB determines that its action does not require environmental review, it is not necessary to determine if other lead agencies may exist.

- Revocation of an IC plan provides for a 30-day notice. This is likely to be inadequate for an ocean carrier to transition to original provisions of the rule. The risk of a 30-day transition at the uncertain end of a three-year program is enough to prevent an ocean carrier opting to implement an IC. The IC section should include a nine-month transition period upon revocation of an IC plan.

- For the reasons described above regarding the Remediation Fund, PMSA proposes that ICs have the same limitation that CARB always uses for determining whether a proposed project results in "real" emission reductions. Any proposed IC should result in emission reductions that are real, quantifiable, verifiable, enforceable, and surplus. Each of these elements have a long history in delivering emission reductions to local communities. The addition of other language only serves to obscure what projects could be eligible.

LCFS Considerations

The economic analysis presented by CARB shows Low Carbon Fuel Standard (LCFS) credit-derived revenue offsetting electricity, labor, and infrastructure costs without restriction. At the time of this letter, CARB LCFS staff is still preparing guidance on the "Use of Proceeds" under the LCFS regulation. As a result, it has not been clear what costs are eligible for offsets on the LCFS "Use of Proceeds" requirements. Please confirm that shore power-related electricity, labor, and infrastructure costs are eligible offsets for shore power-generated LCFS credit revenue.

Summary of Proposed 15-Day Changes and Impacts on Costs Inconsistent with Proposed Regulation

The summary of the impacts on costs states that emission reductions can be achieved for $30,000 per weighted ton and the cost analysis for the proposed regulation has been updated to reflect that cost assumption based on information from PMSA and WSPA. The referenced PMSA email concerned the appropriate value of the remediation fund, since the purpose of the remediation fund is to replace unmitigated auxiliary engine emissions. If CARB staff believes that number accurately reflects the costs to offset uncontrolled emissions, the hourly remediation fund rate should be adjusted to reflect that. If CARB does not believe that the $30,000 per weighted ton estimates of cost reflect the cost of replacement emission reductions, then the cost estimate prepared by CARB should reflect the higher value used to establish the remediation fund rate. CARB should not select higher and lower costs in order to achieve a preferred outcome depending on each situation.

Fundamental Problems with Emissions Inventory Unresolved

Even before addressing the changes brought about by the COVID-19 crisis, the emissions inventory has not addressed known problems as described in previous industry stakeholder comment letters. The inventory overestimates growth, resulting in a significant overestimation of the proposed rule's emissions benefit. The inventory does not consider the emission reductions associated with Proposition 1B funding, requiring emission reductions of 90% under the existing rule – 10% more than the proposed

rule. This results in the inappropriate attribution of emission reductions from existing requirements to the proposed rule. The emissions inventory also inappropriately caps emission reductions under the existing rule at 80%. Every vessel with a call greater than 15 hours will result in emission reductions greater than 80%. In San Pedro Bay, where calls greater than 100 hours are typical, emission reductions can exceed 97%. Yet, no reason is given in the emissions inventory for capping emission reductions. The inventory must be updated to reflect these issues.

CARB inventory staff have acknowledged these issues in a variety of phone calls and emails with stakeholders and have indicated that these issues will be resolved sometime this summer. That delay does a disservice to both the public and decisionmakers in understanding the benefits of the proposed rule changes.

Additional CEQA/EA Considerations

In addition to the previous issues described in this letter that require additional evaluation under the California Environmental Quality Act (CEQA), the changes to the proposed regulation will result in the need for revised environmental assessments. Among the proposed changes, the lead time for tankers will be reduced by 33% and for Ro/Ros by 25%. These changes represent significant new information and a substantial change to the project description that triggers the recirculation of the environmental assessment under CEQA. In addition, by accelerating the deadlines, more infrastructure work will be required over a shorter period of time. A foreseeable consequence is that overlapping construction will lead to higher peak emissions. The California Environmental Quality Act (CEQA) requires that these changes be evaluated.

The COVID-19 crisis and its impact on future cargo volumes, emissions, and benefits of the proposed regulation also represents significant new information requiring review, analysis, and recirculation of the environmental assessment. As described earlier, forecasts used in the analysis of the proposed regulation may overestimate activity by 62% by the end of this year alone! The environmental assessment must be revised to reflect this new reality.

Timed Connection Requirement

CARB staff has revised the one-hour limit on the connect and disconnect times for shore power to a two-hour connect time limit and one-hour disconnect time limit. While it is appreciated that the infeasibility of the one-hour requirement was acknowledged, a two-hour requirement is still arbitrary and capricious and not based on any evidence that it is safe or feasible. As we have said in previous letters, the existing rule permits multiple connection strategies, some of which will require more than one hour. More importantly, the shore power connection process requires individual people to manhandle heavy, high-voltage equipment and energize that equipment – sometimes in adverse weather conditions. Under no circumstances should that work be performed under a stopwatch. The two-hour requirement would likely be ineffective because any exceedance of the one-hour requirement would likely result in a safety exemption being sought, as having labor move faster handling high voltage equipment would be fundamentally unsafe.

CARB staff has still provided no basis on which it can be assumed that connection times can be consistently and safely accelerated. In fact, no data is available from CARB justifying the previous one-hour connection window or the new two-hour connection window under the original ISOR or in the 15-Day Change Notice.

Opacity Requirement

The proposed rule establishes an opacity limit for vessels at anchorage. Such a requirement conflicts with established International Maritime Organization (IMO) and USEPA emissions standards for vessels. USEPA rules preempt state and local emissions standards for oceangoing vessels. While not quantified as a typical numerical standard but a limit based on Ringelmann values, an opacity limit is clearly an engine emissions standard for an operating vessel – even if that operation is at anchorage. Such standards should be promulgated for new engines and done so through existing IMO/USEPA framework. Accordingly, CARB should eliminate the proposed emissions standard from the regulation. Moreover, the novel treatment of vessels At Anchorage should be removed from the regulation for vessels At Berth as they present fundamentally different topics of regulation, on fundamentally different subjects of regulation, and often impact completely separate and different off-road engines. The inclusion of an entirely new class of potential engines, fuel, and emissions standards in this rulemaking is unsupported by significant data in the ISOR, SRIA, or 15-Day Change Notice, and is also subject to the granting of a waiver by USEPA separate and independent of the existing waiver approved for the current regulation.

Commissioning

In discussions with CARB staff, PMSA understands that the proposed requirement that "[t]he port or terminal operator is responsible for commissioning vessels equipped with compatible shore power that is installed on the side of the vessel facing the wharf when berthed" means that upon the commissioning visit of a vessel to a terminal, the terminal can indicate whether their terminal will commission the vessel starboard side to or port side to, consistent with the design and operation of the terminal. PMSA believes that ports and terminal operators are responsible for commissioning vessels without the need for the enunciation of such responsibility in regulation as issues of berthing should be privately agreed to between the terminal operator and ocean carrier and not be prescriptively enforced through regulatory mechanism. PMSA recommends that CARB strike all prescriptive language on berthing orientation and allow terminal operators and ocean carriers to actively manage these issues privately amongst the two parties for peak efficiency.

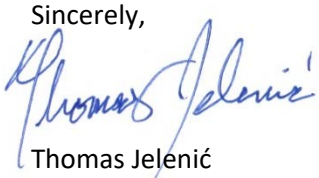
Reporting for Bulk Vessels Should Be Eliminated

The reporting requirements for general cargo and bulk vessels add a real, quantifiable burden to bulk and general cargo vessel operators, but do not advance any emissions reduction program in California. The State should not impose costly reporting requirements for the sole sake of collecting more information, particularly when there is no planned use for that data. If CARB identifies a future need for such data, it is readily available through alternative sources such as marine exchanges or port authorities. There are even existing regulatory tools in place like the OGV fuel rule that CARB can use to

obtain vessel information and ensure significant emission reductions. There is no reasonable basis to place a permanent, costly reporting burden for no measurable or identified benefit.

We appreciate the opportunity to provide these comments on the 15-Day Change Notice and to incorporate all prior correspondence on the proposed regulation documents, including under CEQA, by reference. PMSA respectfully requests that CARB staff directly address all original and supplemental technical issues, including those which address the underlying economic and emissions inventory analyses and how those analyses have materially and significantly changed since their publication, prior to calendaring this proposed rulemaking before the CARB Boardmembers so the public and the Boardmembers can consider the actual facts, impacts, and considerations which exist with respect to the adoption of the substantive amendment of the existing At Berth Regulations.

Sincerely,



Thomas Jelenić
Vice President