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July 24, 2020

Ms. Mary D. Nichols, Board Chair
Mr. Richard Corey, Executive Officer
California Air Resources Board
1001 I Street
Sacramento, California 95812

Submitted via docket as directed at: <http://www.arb.ca.gov/lispub/comm/bclist.php>
Also transmitted via email

Cc (email): Heather Arias, Bonnie Soriano, Angela Csondes, Nicole Light

Subject: Maersk Comments on the Second Public Availability of Modified Text and Availability of Additional Documents and Information for the Proposed Control Measure for Ocean-Going Vessels At Berth, Board item ogvatberth2019

Dear Board Chair Nichols and Mr. Corey,

Thank you for this opportunity to comment on the Second Public Availability of Modified Text and Availability of Additional Documents and Information for the Proposed Control Measure for Ocean-Going Vessels At Berth, Board item ogvatberth2019. We have provided five sets of written comments in 2019 - 2020 (March 8, March 26, June 10, December 6 and April 29th), as well as less formal communications including analyses of arrival time feasibilities. We also provided input and analyses to PMSA and the World Shipping Council to incorporate in their consolidated industry comments.

Maersk is an integrated international container logistics company, operating about 750 container vessels globally as well as marine terminals, warehouses and other essential supply chain functions. Each year 45 to 60 of our vessels make over 500 calls in California ports. Typically, each of these international vessels spends less than 5% of its operable lifetime in the waters of any one state or country. Network changes and vessel redeployments are an essential part of supply chain operations.

Maersk has long been an environmental leader in shipping. Since 2008 we have reduced our fuel consumed and related emissions by 43% on a per container per kilometer basis. We have committed to a 60% reduction and to launch a first carbon-neutral vessel by 2030 on our way to zero carbon emissions shipping by 2050. In the past Maersk voluntarily used dramatically cleaner fuels in California ports, and supported establishing both the California fuel rule and the North American Emissions Control Area. We are committed to going beyond compliance to

achieve environmental excellence and hope these comments will be taken in the constructive spirit with which they are offered.

We appreciate that some of our previous comments were considered and adopted and look forward to CARB's full response to comments. The comments in this letter will focus on the changes made in the Second 15-day package.

1. The notice and proposed regulatory language modifying the implementation, transition and reporting timelines are clear and well-written, and the use of strikeout formats to designate the changes was very helpful.
2. We greatly appreciate the 2-year continuation of the existing regulation and date adjustments to address the timeline inconsistencies identified the proposed rule, move past the worst of the COVID-19 disruptions, and conduct a thorough interim review. During this time the performance of the currently regulated fleets can be determined under the final requirements of the existing rule and related provisions such as Proposition 1B, which were implemented as of 1/1/2020.
3. **Plans and infrastructure timing:** The revised timeline is not fully aligned with public works project timing in the ports. For example, terminal and port plans are due December 2021, with CARB approval lasting up to 90 days. We question whether the required infrastructure improvements can then be funded, permitted and in place to support the 1/1/2023 implementation of the new rules for the currently regulated fleets. This is particularly troubling due to the lack of viable alternative CAECS in most California ports.

Recommendations:

- Include a provision to allocate additional VIEs or TIEs in locations where the necessary infrastructure improvements cannot be achieved in the allotted time.
- Consider allowing unlimited use of the remediation fund or other alternatives to achieve timely reductions and enable compliance in the gap between the vessel compliance dates and completion of needed infrastructure projects.
- Consider allowing use of the remediation fund in situations where no alternatives CAECS are feasible.
- During the 2 years before implementation of the new rule clarify the application and compliance options for lay-by berths and repair berths, where usage and access are by definition variable. Data on these facilities is limited, so the interim review should be used to determine any practicality issues and if needed, adjust the low activity terminals provisions.



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4. **Interim review:** As directed by the Board on June 25th, the Interim review scheduled December 2021 should now cover the full shore power program. We look forward to working with CARB Staff during this period.

The interim review should address issues regarding rule implementation raised by stakeholders over the next two years. As work on implementation continues, it will be critical to resolve issues, including the sufficiency of TIEs/VIEs, incorporation of fleet averaging under Innovative Concepts or CARB Approved Emission Control Systems (CAECS), sufficient compliance pathways for non-frequent fliers, and other issues identified in this letter. This period should also enable updating of the emissions inventory projections.

5. **Innovative Concepts:** The Innovative Concepts (IC) section of the proposed regulation remains extremely complex. Changes should be considered to make the concept more viable as a long-term compliance option.
- a. We support the increase of the term from three to five years. This change will be helpful in encouraging investments. However the window of opportunity for proposals remains overly short, with plans due no later than 12/2021. This greatly limits the usefulness of this concept. CARB should consider ways to encourage innovation in emissions reductions by lengthening the opportunity to propose additional ICs after 2021.
 - b. Section 93130.17(a)(3) and following, starting on page A-61, are extraordinarily complex and restrictive, stating:

"(3) The proposed innovative concept must achieve emissions reductions that are early or in excess of: (1) any other state, federal or international rule, regulation, statute or any other legal requirement (including any requirement under a Memorandum of Understanding with a government entity); or (2) of an emissions reduction strategy identified in an AB 617 ..program..."

"(6) The proposed innovative concept must achieve emissions reductions that exceed any reductions other wise required by law, regulation or



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legally binding mandate, and that exceed any reductions that would otherwise occur in a conservative business-as-usual scenario"

"(12) No innovative concept shall be partially or fully funded with a public incentive program."

These and other restrictions in this section appear to exclude participation by:

- Technologies or operational programs that have been part of a Technology Advancement program in California (e.g., SPBP CAAP), other states, the EU or elsewhere in the world.
- Any technology or program that might conceivably become part of an AB 617 plan that includes an Indirect Source Rule or other broadly defined community recommendation.

We also question how the applicant and CARB staff are to ensure that there are no disqualifying regulations or issues anywhere globally, and who will define the "conservative business-as-usual scenarios."

Recommendations:

- Section 93130.17 should be clarified and streamlined in order to achieve the needed reductions without discouraging innovation or participation in technology demonstrations and incentive programs in other parts of the world (e.g. Canada).
- In addition, it should be clearly stated that CARB's Low Carbon Fuel Credits are not considered to be incentives under this section.

6. Allocation of VIEs and TIEs: Section 93130.11

- a. Section 93130.11(a)(1) calls for reporting of vessel visits to CARB by January 7th. This seven-day period is inconsistent with the 30-day reporting required in other sections. Please clarify whether this report is a simple vessel call count or the full individual call reports for each vessel call that would normally be reported in 30 days.

We fully recognize and support the need for operators to know the VIE/TIE allocation as early as feasible in the year. However large vessels arriving on December 31 may have longer calls due to the holidays, so full data may not yet be available. Occasionally a vessel may still be alongside.

Recommendation: We suggest that either a simple actual vessel arrival/departure schedule be accepted for this purpose, or that preliminary



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reports be allowed by Jan. 7th for calls after Dec. 7th, with updates allowed for those calls when full details are available.

- b. Section 93130.11(a)(1) also excludes calls made under Innovative concepts from being part of the VIE/TIE allocation. Provisions should be made for situations where the innovative concept is not available due to expiring approval or other technical or operational issues.
 - c. Section 93130.11(a)(3) has been aligned with the revised timeline. However the 5% values shown for vessel operators are not sufficient based on the analyses we submitted to CARB over the last year. This should be reviewed further during the period prior to implementation and specifically addressed in the interim review.
 - d. Section 93130.11(e): We appreciate the clarification that TIEs and VIEs can be used as needed by the owner.
7. **Liabilities:** The liability provisions in the new rule should be clarified before January 2023. The proposed rule still calls for joint and several liability for violating the control measure. This conflicts with the basic premise that the new rule should define clear requirements and responsibilities for each participant: ports, terminals, vessels and alternative compliance operators.

Thank you again for this opportunity to comment on the proposed regulatory language. We stand ready to work with CARB and other stakeholders over the next two years to identify and address practical issues and achieve a smooth transition.

Sincerely,

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