

*Fighting for Life*

Taylor Thomas  
15-3-4

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East Yard Communities for Environmental Justice – 2317 Atlantic Blvd. Commerce, CA. 90040

April 23, 2015

Chairman Mary Nichols and Board Members  
California Air Resources Board  
1001 I Street  
Sacramento, CA 95814

Re: 04/23/2015 Board Hearing Agenda Item 15-3-4: Update to the Board on  
Sustainable Freight Strategy and:  
12/4/2013 Memo entitled Reducing Emissions from Rail yards

Dear Chair Nichols:

On January 23, 2009, the California Air Resources Board (“CARB”) Executive Officer granted in part a Petition for Rulemaking filed by East Yard Communities for Environmental Justice, Center for Community Action and Environmental Justice, and other environmental and community organizations pursuant to Cal. Government Code sections 11340.6 and 11340.7. The Petition sought action by CARB to significantly reduce emissions and health risks arising from California (“CA”) rail yards and locomotives.

The Executive Officer noted that the evidence “clearly demonstrates that activities within and around these rail yards have been responsible for an unacceptably high risk.” The Executive Officer confirmed that “substantial additional emission reductions are necessary” and agreed to evaluate implementation options in a technical document and present the Board with a plan to achieve such reductions.

CARB then developed “Technical Options to Achieve Additional Emissions And Risk Reductions From California Locomotives and Rail Yards” and “Recommendations to Implement Further Locomotive and Rail Yard Emissions Reductions.” In these documents, CARB staff identified numerous cost-effective and feasible mitigation measures.

On June 24, 2010 CARB decided to use a voluntary agreement (2010 MOU) between Union Pacific, BNSF and CARB, to reach further rail yard and locomotive reductions vs. implementing regulatory measures, and gave the CARB Executive Officer the authority to negotiate and sign the MOU.

On December 4<sup>th</sup> 2013 the CARB Executive Officer sent a memo entitled: REDUCING EMISSIONS FROM RAILYARDS. In this memo the CARB Executive



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Officer explained that he had decided not to approve the Commitments in the MOU, but rather initiate a public process for reducing emissions from rail and other freight operations. In this memo, the CARB Executive Officer identifies the Scoping Plan Update as the venue to address the needed reductions from rail yards, and the next version of the Scoping Plan Update will be the development of a Sustainable Freight Strategy.

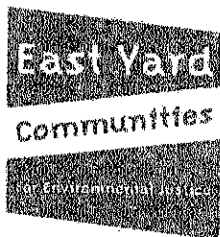
And, a year ago on January 23<sup>rd</sup> 2014, during Board Hearing Agenda Item No.14-1-5: Public Meeting to Consider Developing a Sustainable Freight Strategy, the Board impressed upon staff that the mentioned strategy needs to include measures to reducing emissions from rail yards in the near-term as indicated in the memo regarding rail yards and the MOU. The Sustainable Freight Strategy that is being presented to you today falls short in meeting the near-term needs to address risk and pollution from rail yards.

The need for further action to reduce emissions from rail yards and locomotives to protect the health of the public is pressing and needs to be addressed as an urgent matter and should not be confused with the Sustainable Freight Strategy's long term goals.

Between 2007 and 2011 CARB has conducted the following and more:

- Health Risk Assessments for the 17 major rail yards in California between 2007 and 2009
- Based on the Health Risk Assessments, Union Pacific and BNSF prepared draft mitigation plans (2008-2009)
- ARB Recommendations Document (September 9, 2009)
- Technical Evaluation of Options to Reduce Locomotive and Rail Yard Emissions (August 2009)
- Technical Options to Achieve Additional Emissions And Risk Reductions From California Locomotives and Rail Yards (2009)
- Recommendations to Implement Further Locomotive and Rail Yard Emissions Reductions (2009)
- Environmental Analysis (July 5- August 19, 2011)
- Dozens of Public Meetings

These efforts mentioned above, position CARB to take action on rail yards and locomotives now. We respectfully request that CARB initiate a regulatory process regarding rail yards concurrent to the Sustainable Freight Strategy process.



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We would like to reiterate our comments regarding the “Technical Options to Achieve Additional Emissions and Risk Reductions from California Locomotives and Rail Yards” as they relate to a regulatory approach.

**I. CALIFORNIA RAIL YARD AND LOCOMOTIVE MEASURES ARE NEEDED TO REDUCE UNACCEPTABLY HIGH CANCER RISK TO COMMUNITIES THROUGHOUT THE STATE**

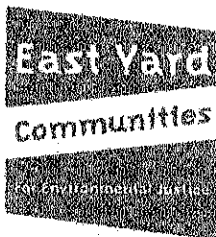
In 2005, CARB prepared detailed human health risk assessments (“HHRAs”) determining that California’s 18 major intermodal and classification rail yards create cancer risks for local communities throughout the State as high as 3,300 per one million. These California rail yards far exceed accepted regulatory standards and are among the highest airborne toxic emitters in the State. CARB has concluded that “every feasible effort” is needed to “reduce localized risk in communities adjacent” to rail yards.

Over three million people are exposed statewide to excess cancer risk of at least 10 in one million. For example, for both the BNSF San Bernardino rail yard and four Commerce rail yards, there are enormous residential areas that have 10 in a million or greater risk of cancer surrounding the rail yards (61,880 acres and 76,000 acres, respectively). We believe that total cumulative risk from all regional sources is far greater and non-cancer risks are estimated by the South Coast AQMD to be at least ten times higher. Simply put, the measures taken to date are not enough.

The HHRAs also demonstrate that for each of the communities affected by railway emissions, a large percentage of the population at risk includes the elderly, the immunocompromised, and children (sensitive receptors). By way of example, around the BNSF San Bernardino rail yard, there are at least 41 locations with sensitive receptors, such as the Ramona-Alessandro Elementary School (670 Ramona Avenue, San Bernardino) that has a student body of 825 exposed to cancer risk ranging from over 500 to 25 in a million. Similarly, there are at least 45 sensitive receptors exposed to cancer risk ranging from over 500 to 50 in a million at the four Commerce rail yards.

Excess cancer risk is present at all of the 18 major intermodal and classification rail yards. The high exposure of sensitive receptors to these risks requires immediate action by your agency.

**II. CARB AND THE 2009 PETITIONERS HAVE REACHED “COMMON GROUND” THAT NUMEROUS REGULATORY MEASURES ARE LIKELY NOT PREEMPTED**



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The Appendix to CARB's "Recommendations to Implement Further Locomotive and Rail Yard Emissions Reductions" concedes that many of the potential measures to address PM criteria emissions and cancer risk at California rail yards likely are not preempted by federal law. Thus, CARB should approach this issue from a position of legal strength. Please, we urge that you do so. The railroads can no longer use the shield of federal preemption to avoid further regulations.

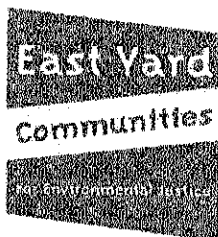
The Federal Clean Air Act ("CAA") delegates regulatory responsibility to CARB for criteria pollutant and air toxic control measures. Thus, pursuant to CAA sections 110(a), 172(c) and 182(b), the State Implementation Plan must demonstrate attainment or include all feasible measures. CAA section 209(e) also gives California authority to regulate certain non-road engines and to adopt "in-use" requirements. Pursuant to this delegation, the Cal. Health & Saf. Code sections 36902, 40462, 40469 and 43018 confirm that CARB has authority to take "whatever" actions are "necessary, cost-effective and technologically feasible" to achieve the maximum degree of reduction possible from mobile sources. Further, CARB has an express duty pursuant to Cal. Health & Saf. Code sections 40702 and 43013 to regulate through rulemaking locomotive and rail yard sources, unless preempted by federal law. In addition, the CAA and Cal. Health & Saf. Code authorize, among other things, regulation to control opacity and diesel exhaust from "in-use" operations. *See Engine Mfrs. Ass'n v. U.S.E.P.A.*, 88 F.3d 1075 (D.C. Cir. 1996); Cal. Health & Saf. Code sections 39650 *et seq.* and 41701.

With this regulatory framework, CARB's own legal Recommendations conclude the following at pages Appendix 6-8 with emphasis added:

"ARB staff believes that ARB likely possesses authority to establish emission standards for switcher and medium horsepower locomotives that principally operate in intrastate service . . .

[w]e believe that a significant portion of the approximate 400 MHP freight and passenger locomotives were manufactured prior to 1973 or exceed 133 percent of their useful lives since manufacture or last manufacture and would fall outside of the CAA preemption . . .

[t]he other 28 options considered by staff involve local rail yard sources and intrastate activities. These options . . . are not preempted under CAA section 209(e)(1). ARB thus has authority under California law and CAA section



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209(e)(2) to adopt emission standards for most, if not all, of the sources covered by the options.”

In light of this, there is much legal “common ground” with petitioners. CARB has a duty under federal and State law to adopt all feasible and cost-effective regulations for these sources of criteria and toxic emissions. CARB should immediately initiate rulemaking to factually analyze and study regulations for these rail yard and locomotive sources.

### **III. CARB SHOULD IMPLEMENT THROUGH REGULATIONS AND SITE-SPECIFIC MITIGATION PLANS COST-EFFECTIVE AND FEASIBLE OPTIONS 11, 21, 35, 36 AND 37 FROM CARB’S TECHNICAL OPTIONS TO ACHIEVE ADDITIONAL EMISSIONS AND RISK REDUCTIONS FROM CALIFORNIA LOCOMOTIVES AND RAIL YARDS (2009)**

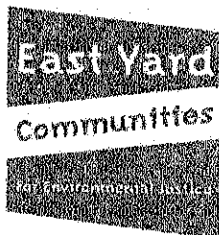
The 2009 Petitioners believe that Options 11 (electric-powered yard trucks), 21 (Advanced Locomotive Emissions Control System), 35 (ambient particulate matter monitoring stations), 36 (enhanced truck and locomotive inspection program), and 37 (move rail yard emission sources away from nearby residents) are feasible and cost effective.

Options 11, 21, 35, 36, and 37 are focused on improvements to the rail yards themselves, reducing the overall emissions from the rail yards. The combination of the above options (11, 21, 35, 36, and 37) would provide for a significant decrease in particulate matter emissions from the rail yards, therefore decreasing PM and criteria emissions and cancer risk to nearby residents.

Option 11, which consists of revamping all 322 diesel yard trucks into electric-powered yard trucks, would reduce PM and toxic risk to the surrounding communities. If implemented, the trucks would reduce DPM and nitrous oxides emissions from yard trucks from 0.062 tons/year to zero tons/year.

Option 21 involves installation of an Advanced Locomotive Emission Control System (“ALECS”) near locations where locomotives are idling, load tested and congregate would reduce PM and toxic risk to the surrounding communities.

Option 35 involves the installation of ambient monitoring stations with Aethelometers to measure rail yard DPM emissions in an addition to air toxic monitoring. This option is feasible and critical for demonstrating the effectiveness of



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mitigation plans. These stations would allow for real-time tracking and monitoring of DPM emissions, as well as measurement of pollutant concentrations to which the public is exposed.

Option 36 involves an enhanced truck and locomotive inspection program. Stepped up enforcement of idling regulations through CARB staff inspections at designated rail yards would ensure continuous compliance by the rail lines. This includes heavy duty diesel truck idling and retrofit inspection and enforcement, as well as in connection with CARB rules concerning drayage fleets, locomotive in use compliance testing for federal standards, non-essential and essential locomotive idling, refrigerated units, intrastate locomotive fuel and cargo handling rules.

Option 37 is to relocate rail yard emission sources further away from nearby residents. Studies show that a 90% reduction in cancer risk can occur if DPM sources are moved to distances over 1,500 feet from receptors, and cancer risk decreases dramatically with increased distance from the DPM source. Significant reductions in health risks can be achieved through relocation of maintenance facilities, staging areas and yard entrances, or by requiring higher emission controls on equipment near high-risk residential areas.

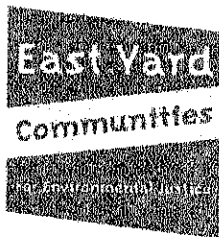
Accordingly, the undersigned respectfully requests that CARB take the following comprehensive feasible actions to reduce criteria pollutant emissions and toxic risk at California rail yards:

**Direct staff to report to the Board with site-specific "Diesel Particulate Matter Mitigation Plans" for the 18 individual major California rail yards (starting with those with the highest cancer risk) with enforceable measures including but not limited to:**

- Option 11 (electric-powered yard equipment);
- Option 21 (Advanced Locomotive Emissions Control System);
- Option 35 (ambient PM monitoring stations);
- Option 36 (enhanced truck and locomotive inspection program); and
- Option 37 (move rail yard emission sources away from nearby residents)

**Direct staff to report to the Board within 120 days on:**

- Seeking changes in federal law to eliminate preemptions;
- Seeking changes in federal law for switch and line haul locomotives;
- Development of improved emissions inventories for locomotives and rail yards;
- Support advanced locomotive research programs



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We thank you for the opportunity to provide these comments.

Sincerely,

mark! Lopez,  
Director  
East Yard Communities for Environmental Justice