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From: bob@nicksinlaw.com
Sent: Monday, October 14, 2024 10:52 AM
To: ARB Clerk of the Board
Subject: Public Comment Submission Item 24-5-4 Board Meeting set for 10/24/24
Attachments: LTR to CARB re Changes to Carl Moyer Program Locomotive Guidelines from the Law Office of Robert S. Nicksin.pdf

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I would like to submit the attached comment letter regarding item "24-5-4: Public Meeting to Consider Proposed 2024 Revisions to the Carl Moyer Air Quality Standard Attainment Program Guidelines" which is on the agenda for the October 24, 2024 board meeting.

The submission link found in the notice document (<http://ww2.arb.ca.gov/lispub/comm/bclist.php>) does not appear to be working.

Please confirm receipt of this comment letter at your earliest convenience. Thank you.

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October 14, 2024

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**RE: Comments on Proposed Revisions to the Carl Moyer
Program Guidelines**

Dear Board of Directors:

I represent certain railroads that are currently evaluating their options to utilize Carl Moyer Program ("CMP") grant funding for the acquisition of locomotives. As you are aware, the California Air Resources Board's ("CARB") adoption of the In-Use Locomotive Regulation (the "Regulation") in April 2023 has raised questions about the availability of CMP funding for locomotive retrofit and replacement projects. Of particular concern to my clients is the interplay between the Regulation's Alternative Fleet Milestone Option ("AFMO") and the potential availability of CMP funding.

To assist my clients in their decision making, I would appreciate responses to the following questions:

1. The Regulation is currently being challenged in court (American Association of Railroads v. Randolph). The outcome of this case is uncertain, and the matter is currently stayed pending a decision from the U.S. Environmental Protection Agency ("EPA") on CARB's Section 209(e)(2)(A) authorization request. If EPA's action or the pending litigation results in delays in implementation of the Regulation, does CARB anticipate taking any action that would result in an extension of the project grant life under the CMP program?

2. In the Regulation's Initial Statement of Reasons (page 56), CARB states regarding CMP funding, "On the date a regulation is approved by the Board, project life requirements for any new grants are altered: the project life must be entirely prior to the regulatory requirement." The phrase "the regulatory requirement" does not appear to be defined. What is meant by "the regulatory requirement" as it would apply to the AFMO? Since the AFMO has varying requirements for the years 2030, 2035, 2042 and 2047, does each of these years constitute a separate "regulatory requirement"?
3. The AFMO requires submittal to CARB of an application demonstrating how an operator will achieve each of the baseline milestones in years 2030, 2035, 2042 and 2047. If an operator were to take additional actions beyond those required in the application (for example, by replacing additional diesel locomotives with zero emission locomotives), would those additional actions be viewed as "cleaner-than-required" and therefore potentially subject to CMP grant funding? Upon CARB approval of the AFMO baseline application, can this document then be relied upon by local air districts when determining for CMP purposes whether a new locomotive is "cleaner-than-required" by the Regulation (i.e., beyond what is required in the approved application)?
4. By way of example, a rail operator has elected compliance using AFMO and has a total fleet of 10 Tier 1 units. Prior to the January 1, 2030 compliance date, the operator applies for a CMP grant to purchase 10 Tier 4 or ZE locomotives. The operator commits to place the locomotives in service in 2027 operate them for 10 years, seven years beyond initial January 1, 2030 regulatory milestone. Can the operator include the emissions reductions from the Tier 1 baseline for all locomotives for all 10 years it commits to operate for the purposes of calculating the maximum CMP grant award?
5. An operator, as of the 2030 compliance date, has a fleet of 10 locomotives, six of which are Tier 4 locomotives and four are Tier 3, and exceeds the January 1, 2030 requirement (50 percent of a Locomotive Operator's annual fleet Usage in California being from Cleaner Locomotives, ZE Locomotives, ZE Capable Locomotives, or ZE Rail Equipment). The operator decides to apply for CMP funding to obtain a zero-emission locomotive to replace a Tier 3 locomotive. Since this is "cleaner-than-required," can this operator potentially obtain CMP funding? Would the life of the project potentially be through 2047, when the 100% ZE locomotive fleet requirement comes into effect?
6. Where the operator of a fleet of 10 Tier 4 locomotives meets its AFMO 2035 milestone (100 percent of a Locomotive Operator's annual fleet

- Usage in California shall be from Cleaner Locomotives, ZE Locomotives, ZE Capable Locomotives, or ZE Rail Equipment) but goes further by replacing several Tier 4 locomotives with ZE locomotives, will such replacements be classified as “cleaner-than-required” and therefore potentially subject to CMP funding?
7. Where an operator utilizes the offset provisions of the AFMO to demonstrate compliance, and yet desires to replace additional older diesel locomotives with ZE locomotives, will those replacements be classified as “cleaner-than-required” and therefore potentially subject to CMP funding?

Thank you in advance for responding to these queries.

Sincerely,
/s/ Robert S. Nicksin
Robert S. Nicksin