

A. P. MOLLER - MAERSK GROUP

MAERSK INC.

March 23, 2009

Clerk of the Board
California Air Resources Board
1001 "I" Street
23rd Floor
Sacramento, CA 95814

Via First-Class U.S. Mail and electronically <http://www.arb.ca.gov/lispub/comm/bclist.php>

Re: Comments on Regulations on Fuel Sulfur and Other Operational Requirements for Ocean-Going Vessels within California Waters and 24 Nautical Miles of the California Baseline -- Comments Due March 23, 2009 ("Proposed Regulations").

Maersk Inc. and Maersk Line respectfully request the California Air Resource Board's (CARB) consideration of the following comments on the Proposed Regulations referenced above. As demonstrated by our voluntary initiatives, we fully support efforts to improve air quality. We do however question the approach taken, and in particular the State's jurisdiction beyond the normal 3nm limit.

A.P. Moller – Maersk, our parent company, is a market leader in worldwide container shipping and logistics under the brand names Maersk Line, Maersk Logistics, Safmarine and APM Terminals. The company operates more than 460 container vessels around the world. For more information, see www.maerskgreen.com and www.maerskline.com.

Maersk Line has also been a leader in environmental improvements, in both vessel design and operations. This is particularly evident in our environmental commitment in California. Since March 2006 ships operated by or for Maersk Line have voluntarily switched to low sulfur fuel (<0.2%S MGO) in both main and auxiliary engines, and operated engines in "low-NOx mode," when near or in California ports. Reductions achieved have been 95% of SOx, 86% of PM and at least 12% of NOx. Over 1000 vessel calls on the North American west coast have involved fuel switching in these three years, reducing air emissions by over 2400 tons. We have openly shared our experiences with CARB, EPA and the industry.

International vessels are best regulated internationally, by rules created through the IMO. This ensures clarity and consistency of rules throughout the globe. IMO has made significant progress in implementing such rules for a variety of vessel operational and environmental issues. We believe California can achieve the desired results, with less litigation and more cooperation, by encouraging progress on implementation of international standards such as the proposed North American ECA.

Recommendation: The ARB should suspend activity on this rule until critical legal issues of pre-emption and jurisdiction have been resolved, or unless the proposed North American ECA is not implemented. As an interim measure, voluntary efforts have been shown to result in substantial air quality improvements, and can be particularly effective with incentive programs, reducing competitive cost pressures. Such approaches are already helping bridge the time until international regulations are in place, and should be considered seriously before implementing these Proposed Regulations.

Jurisdictional and Legal Considerations

The Proposed Regulations would regulate fuel use and vessel operations in vessels engaged in interstate and international commerce, including when the vessel is more than three miles from the California coastline. Our concerns about the legal and jurisdictional issues are summarized below.

1. US CAA Preemption. These rules rest on the same legal framework and rationales which CARB advanced to support the now enjoined "Ocean-Going Vessel Auxiliary Diesel Engine Regulation". (See PMSA v. Goldstene, Case No. 206-cv-02791). The federal Clean Air Act (CAA § 209(e)(2)(A)) preempts the Proposed Regulations. The July 23, 2008 comments on the Proposed Regulations of the Pacific Merchant Shipping Association provide substantial detail on precisely why and how the Clean Air Act preempts these rules. CARB has not advanced a different legal rationale or analysis which will survive preemption under the Clean Air Act.

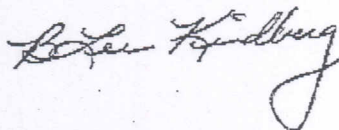
A waiver from US EPA is required for the Proposed Regulations to be adopted. To our knowledge US EPA has not granted a waiver.

2. CARB May Not Regulate Conduct Beyond the 3 Mile Limits. The Submerged Lands Act preempts regulation of conduct on board vessels more than 3 miles from the California coastline, yet the Proposed Rules require material compliance actions and conduct well beyond the three mile jurisdictional limit. Congress has not granted authority to CARB to promulgate an independent regulatory scheme governing fuel use of vessels engaged in international or interstate commerce. Accordingly, the Proposed Regulations are not authorized and are preempted.
3. The Regulations exceed state police powers. The Proposed Regulations mandate fuel switches at least 24 nm from the California coastline. In doing so they also mandate actions more distant from California, by requiring fuel purchases at distant facilities and requiring other equipment, operational or maintenance changes. The requirements apply to both foreign flagged and U.S. vessels, resulting in regulation of foreign vessels engaged in international trade.

For all of these reasons, the Proposed Regulations are preempted by CAA § 209(e)(2) and, under the principles articulated in United States v. Locke, the Proposed Regulations exceed the police power authorities vested in the State of California.

Thank you for this opportunity to submit these comments. For clarifications or further information, please contact me at 704-571-2693 or Lee.Kindberg@maersk.com.

Sincerely,



B. Lee Kindberg, Ph.D.
Director, Environment