

CITY OF OAKLAND

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COMMENT FOR TRUCK BUS, DRAYAGE, REGULATIONS.

California Air Resources Board

I write to comment on the recent decision of the Board to widen and perpetuate the disparate treatment of Port (drayage) truckers verses non-Port truckers in your truck (and bus) regulations. In particular, the ARB's decision to respond to lower-than-expected NOx levels, by easing the requirements on most California truckers, while holding a small group of truckers to a higher standard, lacks valid cause to justify the inequity.

At this time, I urge you to take the following action:

- a. To defer the next Phase of the Port (drayage) truck compliance by a length of time NO LESS THAN the length of time that non-Port truckers are being extended.**
- b. To commit to resolving the issue of the lack of funding for implementation, and to commit to resolving the issue of the non-existence of the required NOx filter, by a time well before the deadline for the next Phase of implementation.**

As **Oakland's elected city-wide Councilmember**, and a member of the city-port liaison committee, I have witnessed extensively the impacts of attempts to implement Phase I of ARB's drayage truck rules, as they manifest in the real world, and I am responsible to speak up for the well-being of all the people of Oakland. As a longtime environmental advocate with experience in a wide range of strategies including clean-fuel technology and more, I am a strong supporter of the goals of the ARB to reduce dangerous emissions, both in terms of local air pollution and human health and in terms of global climate impacts. It is possible to implement truck regulations which would achieve these goals, but the proposal now under consideration would not only cause economic harm, it would also fail to attain clean-air and other goals.

The primary reason given for the decision to create initially, and now to widen, the disparity between on-Port and off-Port regulations, is **"to protect the communities near the Port."** It is often recognized that such communities, like West Oakland near the Port of Oakland, are often disproportionately struggling with poverty and health

hazards. The focus on trucks on Ports was explained as a way to focus clean-air implementation on these hard-hit neighborhoods. **However, as the balance of emissions has changed, there is not valid justification for now widening the disparity between truck rules.** Our Port trucks have engaged in Phase I, and are now, dramatically cleaner. While significant emissions continue from non-Port trucks through the communities and freeways over those struggling communities, and from ships. **If the goal is to protect communities like West Oakland, the now-pending policy decision will not achieve that goal.** If there is another goal, which would justify placing the economic burden of the next step on that struggling community, it has not been publicly articulated.

The ARB recently revealed that certain emissions, especially NOx, are at lower than projected levels at this time. As a result, in the coming several years, you have decided that dramatically less total work will need to be done in California in terms of emission reduction actions, especially for NOx. The question about how to allocate the new, much smaller reductions you are seeking in the coming years has been handled in a very odd way – while Statewide the total obligations to take action in the coming years on trucks has been cut by a dramatic amount – it has been allocated such that Port truckers must bear the entire financial burden for ALL of the planned NOx reductions in the coming years, but the larger group of non-Port-specific truckers, will NOT be required to take any action whatsoever in the coming years on NOx reduction. **So, while Statewide the burden is reduced in total, your now-pending proposal shifts the responsibility onto a small group unfairly.** Furthermore, if you have decided that NOx emissions are sufficiently low that only a small number of trucks will need to take action, it would make sense to either target the worst trucks, or otherwise share the responsibility statewide. Unfortunately, the Board's recommendation does not seek to have the most-polluting trucks upgrade in the coming years, nor to simply make everyone upgrade in the coming years, but rather, makes only a small and lower-income group make changes, even though they do not have the most-polluting trucks. This not only is unfair, it also results in less pollution reduction than if you targeted the worst trucks in the State. Furthermore, the NOx filter which drayage trucks would be required to purchase does not exist. If all California trucks were about to be required to purchase one, then the upcoming market demand would be powerful enough to nearly guarantee that businesses would find it worthwhile to manufacture, produce, and sell the required device. Since you have now shrunk the number of truckers who will be required to purchase the NOx device to a small fraction of the trucks in California, you make it far less likely that any business would consider it worthwhile to produce and sell it, and you are not taking any action yourselves to make sure the required device will exist. If only a small number are produced, they will be much much more expensive than if they had been mass-produced, as would have taken place had you not given a time extension to statewide trucks. Thus, the burden of the requirement is much heavier

than you are acknowledging, making it even more inappropriate and wrongful to place 100% of California's NOx reduction costs exclusively on this small group of low-income people.

I believe the serious negative impacts of the now-pending decision have not been mitigated, analyzed or even fully understood. In particular, in addition to the need to study the impacts of each of the two policy actions – to extend the deadline for reduction of emissions from diesel vehicles on our local streets, roads, and highways, while making more strict the emission regulations on vehicles that operate on ports and railyards – **the ARB must analyze the impact of the two actions when looked at together, and the disparity should be eliminated or a very good reason given to justify it.**

It would be inappropriate and unlawful to proceed to implement these policy proposals at this time, without mitigating, or even looking at, the serious, harmful impacts of the now-pending proposal. (Further detail on these harms in attached appendix).

I would be happy to work with you to help ensure effective implementation of next steps in a manner that will improve pollution reduction and also solve the problems under discussion. Thank you very much for your consideration. Sincerely,

Rebecca Kaplan

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Appendix:

Harms Caused by Widening the Disparity between the Truck Rules:

The disparity between regulations on-port (drayage) and off-port causes serious harms to the environment, to human health, to social equity, and to economic opportunity and jobs, and the claimed benefits of this policy are not true.

HARMS SPECIFICALLY CAUSED BY the ARB Action (to loosen rules on trucks throughout our communities while strengthening rules only on Port/drayage trucks):

- 1) In order to reduce emissions from high-polluting diesel vehicles, ARB could offer incentives for taking a non-compliant vehicle out of service. But that is NOT proposed. Instead, the more-polluting vehicles will be moved off the Port, but will STILL be IN USE! If, in the opinion of the ARB the vehicles emit too highly to work on the Port (which has no adjacent homes nor schools) then those same vehicles certainly should be considered too highly polluting to drive through our communities working in other non-Port areas, where they often do travel adjacent to homes and schools. Due to its location many of the older vehicles which you propose to kick out of the Port of Oakland – those higher-polluting trucks are most likely to end up in the nearby area, and thus, to end up emitting in the already struggling community of West Oakland
- 2) When the rules were initially proposed years ago, Port Truckers were told repeatedly at numerous meetings that the proposed early upgrade rule for **Port Trucks would be Funded! This turned out to be a huge problem, as the funding provided was not adequate to the task.** As many truckers directly involved have already written – the funding mechanism was difficult, there was absolutely not enough money provided to cover the need, and was not as much as had been promised, many of the lowest-income and non-English speaking truck drivers ended up left out, and the process to seek the funding was difficult and inaccessible for many truck drivers. **For the Phase II now under discussion, there is NO evidence whatsoever to ensure that funding will actually be provided.** The whole notion that it might be fair to force a small minority of trucks drivers in California to cover the whole financial cost of improving the emission situation in California at this time never would have been justifiable to adopt in the first place, had it not been for the funding promises which was publicly made at that time. A promise that was NOT kept. Now, for Phase II, the ARB is not even making a promise to provide the funding. And is not proposing to mitigate the disparate economic harm caused by the failure to adequately fund Phase I, even though funding for Phase I was publicly promised. Under the current understanding, in which the State will NOT be funding the next steps, it is entirely morally and legally indefensible to disparately place the entire

financial burden for reducing truck emissions in California exclusively on one small group of truck drivers.

- 3) **Claiming that the disparate rule is justified because it is to protect the health of nearby residents is not valid.** To many it appears simply odd and bizarre, as well as unfair, that Port truckers would be held to a higher standard, and forced to spend vast sums of money at this time, that non-Port truckers are not required to do. Certainly from a global warming and climate change perspective, there would be no justification for selecting out amongst trucks in California the smaller number of Port trucks, rather than other trucks. However, the ARB has repeatedly publicly asserted that the justification, and, in fact, the entire reason, for the selective restriction of Port trucks is due to the desire to protect the community near the Port from dangerous pollution emissions. While this type of disparate treatment puts a disproportionate share of the economic harm on the nearby low-income and underserved community – where a disproportionate share of the economically-harmed truck drivers live -- this was supposed to be justified by the idea that cleaning up Port trucks would thereby especially help to reduce dangerous emission exposures in those same low-income and underserved communities near the Port. However, this is turning out not to be the case. Your own regulations attest that the human health harm from these types of emissions is focused on those in the immediate area of the emission, for example, your standard of 1,000 feet from a freeway/diesel emissions as a standard for homes and human health risk in ARB-approved regulations. On the Port property, the trucks are absolutely never immediately adjacent to a home or a school – never idling under residential windows, and generally NOT within 1,000 feet of sensitive uses, such as homes and schools. In contrast, non-Port trucks are often and regularly to be found working and travelling and emitting particulate matter and NOx in areas surrounded by houses, schools, hospitals, and in the community. Since the trucks being kicked out of the Port under the ARB's rules can, and do, turn up working within the community, closer to homes than they would have been at the Port, and since the ARB does NOT take these trucks out of service, but merely encourages moving them to be in service in a different location – not only is overall air quality not being improved, the community living near the Port is not being protected from dangerous truck emissions.
- 4) Focused, targeted, economic devastation is aimed discriminatorily and unfairly exclusively on one low-income community, and is racially disparate treatment and is not justified by any rational relationship to any legitimate goal: The ARB is called upon to reduce air pollution throughout California. One part of this goal is served by regulating emissions from diesel vehicles, and regulating NOx. Diesel trucks are a genuine source of air pollution emissions, and thus, regulating the

emissions and requiring steps to reduce them are important. The need to further reduce pollution is a state-wide need, yet the current ARB proposal, rather than treating this as a statewide responsibility, is instead focusing the requirement to take the next steps at this time exclusively on one small, low-income group, made up disproportionately of people of color. Under the proposal now being considered, the long-haul truckers in California would have their requirements loosened. The trucks which drive in our neighborhoods, deliver to our local stores, and emit in our communities would be allowed to continue to do so – those trucks would be exempted from taking action at this time to reduce their particulate emissions – at the same time, **the small minority of Port truckers, would be obligated to make upgrades not being expected of others, and would be obligated to fund these upgrades themselves.** So, the ARB is choosing to reduce emissions only by a small amount at this time. But the literal price – the dollars that will need to be spent in this State to make this reduction in emissions – that cost will be borne only by one small group of the people who can least afford it – the low-income people who drive at our local port – while other, often wealthier businesses who drive elsewhere within our State and within our Communities would be exempted at this time from taking any action.

- 5) The disparate rules have created an entirely new dangerous hazard to the environment and human health by motivating people to swap vehicle loads on the streets of West Oakland. (Drayoffs) Since the higher-polluting trucks ARE ALLOWED BY YOU to drive throughout the community – they are only not allowed into the Port – they can drive to near the Port, and then swap with a Port-compliant vehicle to drive the load into the Port. You motivate this conduct with your policy, by having disparate rules for Port and non-Port trucks. This causes idling and truck traffic through a high-pollution residential community, as well as the actual load-switching taking place in the community. These actions endanger the community both with the threat of being hit by trucks going to inappropriate places, and exposes the local community to much higher levels of diesel particulate emissions as trucks drive and idle through and into the community in West Oakland. The decision to perpetuate the gap between rules for Port and non-Port trucks will only worsen this situation.
 - a. If you were to propose to solve this problem by creating a new enforcement power to prevent and prohibit these drayoffs/swaps, that would require live, on location enforcement personnel in an ongoing way. If you claim to propose to solve this problem through new enforcement efforts prohibiting such activity, those enforcement efforts must be funded, and would need to include actual live enforcement/patrol personnel covering, in a full-time way, the areas around the Port. (Staff has implied that even if you adopt the new rule, that the amount of new budget/staffing devoted to implementing it will be zero).

- b. If you pass a new rule here, but provide no budget to inform people about it and NO budget and no staff devoted to enforcing this entirely new enforcement power, then you, in actual fact, are not creating a new enforcement system and are not mitigating the harms you are causing through your policy of disparate treatment of Port and non-Port trucks.
- 6) Have you conducted an equity impact analysis of your proposal to widen the disparate treatment of Port and non-Port trucks? Have you conducted an environmental impact analysis of this proposal to move certain trucks off Port use, but keep them in use in our communities? Please send any such documents that you have prepared in the course of making this decision. In addition, I urge you to take close note of the extensive evidence of the negative impacts of your disparate policy, not only in my comments, but from many others as well, including the Port of Oakland truck drivers, who themselves bore a huge disproportionate burden already in implementing Phase I. Prior to receiving this information, you might have been able to assert that you did not “intend” to cause the harms your policy causes. Now you have been informed of them, on the record. If you were to continue to propose to even more disparately enforce the next step of emission reduction rules against this small group of truck drivers, and if you continue to move ahead to implement this without mitigating the harms caused by your policy of disparate treatment then, at that time, your action disparately causing harm to a specific community could then be considered to be *intentional*, as, at this time, you have been informed of the harms of the disparate treatment policy.

In order to avoid these harms and more, I recommend the following action:

- a. **To defer the next Phase of the Port (drayage) truck compliance by a length of time NO LESS THAN the length of time that non-Port truckers are being extended.**
- b. **To commit to resolving the issue of the lack of funding for implementation, and to commit to resolving the issue of the non-existence of the required NOx filter, by a time well before the deadline for the next Phase of the Port (Drayage) Truck rule.**