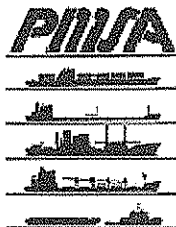


Mike Jacob
10-6-3



June 23, 2010

Hon. Mary Nichols, Chairman
California Air Resources Board
1001 "I" Street
Sacramento, CA 95812

RE AGENDA ITEM #10-6-3 – FY 08-09 and 09-10 Proposition 1B Allocations

Dear Chair Nichols and Boardmembers:

On behalf of the members of the Pacific Merchant Shipping Association (PMSA), I am writing to express our disappointment with the Recommended Allocations for the latest round of funding the Proposition 1B Goods Movement Emission Reduction Program. PMSA represents ocean carriers and marine terminal operators which conduct business at all of California's public ports.

In anticipation of this allocation by the Board, the Ports of Long Beach, Los Angeles, Oakland and Port Hueneme all submitted shore power funding requests. ***PMSA supports each Port's shore power grant request and implores you to fully fund each of these requests in Phase I of the current round of funding allocations.*** We agree with CARB staff that Phase 1 funding should be awarded mindful of "the need to provide funds earlier for ships at berth due to multi-year construction timeframes and upcoming compliance dates."

We further agree with the recommended tentative funding allocations for the Los Angeles/Inland Empire Corridor, which fully funds the bond allocations requested by the Ports of LA, Long Beach and Port Hueneme.

However, we are gravely concerned with the lack of funding proposed for allocation to the Port of Oakland. It is imperative that CARB allocate the entire amount requested for shore power infrastructure by the Port of Oakland, and that as much of this amount as possible be funded in Phase I. This funding is critical to the Port, the request was made consistent with and pursuant to the newly revised Guidelines, and to not fully allocate this grant request would actually make the Board's newly revised Guideline target funding level for shorepower virtually unattainable.

If the recent Guideline revisions' Category Funding Targets reflect CARB's priorities for Proposition 1B spending, then this is yet one more reason why the Board should fully allocate the amounts requested by the Ports. The total amount of Shorepower funding requested by the Ports in response to the current NOFA equals \$100.4 million. The total 2008 funding round awards to shorepower totaled \$5.3 million. This leaves a balance in this Category Funding Target of \$54.3 million.

In other words, of the \$154.7 million balance remaining in this funding category, the current Port request equals 64.9% of the Category funding. Given that this allocation represents \$500 million of the remaining \$750 million of Proposition 1B funds available to be awarded, or 66.67% of the total funding, the total amount requested by the Ports is on track with full Category funding.

However, the staff's recommended allocations would leave the shorepower Category Funding Target with an overfunded balance of \$69.5 million going into the final round. Not only does this not reflect the intent and goals of the Guideline revisions made only a few short months ago, but this runs precisely counter to the staff prioritization which recognizes that shorepower funds must be provided earlier than other funds.

Moreover, not fully funding this request runs counter to the Board's direction to staff (given upon approval of the Guideline Revisions) that it be sensitive to the needs specifically of the Port of Oakland and to be flexible and creative with it as the allocations were developed. This is not reflected in the recommendations before you for consideration today.

Upon approval of the Guideline revisions, the Board acknowledged that time is of the essence with regard to these critical air quality infrastructure investments, and that by expediting the full and complete allocation of the requested shorepower grants not only will our communities breathe easier sooner, but we will put many thousands of Californians back to work and help set the Ports on firmer financial footing. In addition, investments in shore power infrastructure are the best use of bond revenues from a public finance perspective as well. Every dollar of public funds expended in shore power projects will be used in developing public capital projects managed by local public agencies and then used to build publicly-owned infrastructure on public property managed by an open, transparent and public entity. As you know, these shorepower capital improvement projects will have a base operational lifetime and provide air quality benefits for the entirety of the bond payback period.

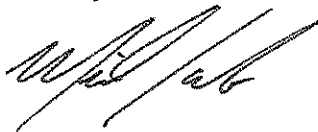
Hon. Mary Nichols, Chairman
Proposition 1B Allocations
June 23, 2010
Page 3

When one considers the economic and environmental costs that may result from not fully funding the Port of Oakland's request, we fail to understand the basis for failing to fully fund the request during this current allocation. The fact is, that if this money was to be provided to them in the final round then they would not have the resources available to deliver shorepower infrastructure in time to be prepared for the 2014 regulatory baseline, much less able to deliver additional emissions benefits over and above that baseline.

As you are well aware, PMSA has been a consistent advocate of maximizing the cost-effectiveness and proper utilization of the bond funds in the California Ports Infrastructure, Security, and Air Quality Improvement Account. We have not only commented extensively on the recent Guideline revisions but participated and submitted comments to staff at both the ARB and local air district levels as the current applications to be funded were considered. Please find attached our most recent and relevant correspondence to the Board and staff on this issue.

Thank you for your efforts to deliver maximum and early air quality improvements to the Ports and port communities. We appreciate the Board's commitment to providing the infrastructure necessary to deliver not only the baseline requirements of the CARB shorepower regulation but the early and extra emissions benefits that will accrue from Proposition 1B.

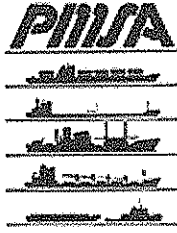
Sincerely,



Mike Jacob
Vice President

enclosures

cc: Boardmembers, Air Resources Board
California Association of Port Authorities
Advocation, Inc.
KP Public Affairs
Shaw/Yoder/Antwih



June 7, 2010

Ms. Barbara Van Gee, Manager
Goods Movement Programs Section
California Air Resources Board / SSD
PO Box 2815
Sacramento, CA 95812

**RE: Proposition 1B Preliminary Staff Recommendations to Allocate
FY 2008-09 and FY 2009-10 Funds**

Dear Ms. Van Gee:

On behalf of the members of the Pacific Merchant Shipping Association (PMSA), I am writing to present our comments on the Preliminary Staff Recommendations for the latest round of funding the Proposition 1B Goods Movement Emission Reduction Program. PMSA represents ocean carriers and marine terminal operators which conduct business at all of California's public ports.

As you are well aware, PMSA has been an advocate of maximizing the cost-effectiveness and proper utilization of the bond funds in the California Ports Infrastructure, Security, and Air Quality Improvement Account. Consistent with our earlier positions, and in order to deliver maximum and early air quality improvements at our Ports, it is imperative that the Board maintain the maximum amount of funding possible for maritime sources and allocate full funding of all shore-power requests made by all of our public ports such that they are given the opportunity to maximize emissions reductions in the most cost-effective manner.

Keeping 1B funding for air quality improvements at the ports is not only of critical importance to the health of citizens in impacted communities throughout our state, but it is also of critical importance to the vitality and competitiveness of our maritime economy, which has been decimated by the global recession. Moreover, since Proposition 1B was placed before the voters in 2006, CARB has imposed numerous regulations on the ports and their private industry partners in the maritime supply chain that will ultimately cost over \$5 billion to fully implement through 2014. Proposition 1B funds must be made available to the ports and their supply chain partners if we are to manage both these massive regulatory burdens and continue to grow jobs and California's trade economy.

In response to the latest NOFA issued by CARB, the Ports of Long Beach, Los Angeles, Oakland and Port Hueneme all submitted shore power funding requests. Each did so in applications that followed the newly revised CARB Guidelines. We support each Port's shore power grant request and implore you to fully fund these requests in Phase I of the current round of funding allocations.

To that end, we agree with CARB staff's finding that Phase 1 funding should be awarded mindful of "the need to provide funds earlier for ships at berth due to multi-year construction timeframes and upcoming compliance dates." We further agree with the recommended tentative funding allocations for the Los Angeles/Inland Empire Corridor, which fully funds the bond allocations requested by the Ports of LA, Long Beach and Port Hueneme.

However, we are gravely concerned with the lack of funding proposed for allocation to the Port of Oakland. It is imperative that CARB allocate the complete \$39.1 million requested for shore power infrastructure by the Port of Oakland and that as much of this amount as possible be funded in Phase I. This funding is critical to the Port, the request was made consistent with and pursuant to the newly revised Guidelines and there is no policy basis given for not fully allocating this grant request.

Again, as CARB staff has acknowledged, it is imperative that as many 1B funds be frontloaded to the support of cold-ironing infrastructure as possible. In addition to this, CARB staff fully anticipated a larger cold-ironing request in this round when it proposed its revised Guidelines earlier this year – that was the basis for the revision of the Category Funding Target for cold-ironing to be revised upwards from \$100 million to \$160 million and the per berth funding amounts to be granted at \$3.5 million per berth if improvements could be made by 2012.

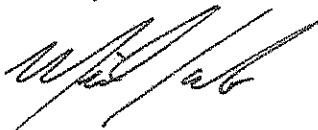
Moreover, the prudent administration of this fund, if one is to believe that the recent Guideline revisions' Category Funding Targets reflect CARB's priorities for Proposition 1B spending, should lead CARB staff to a full allocation of the amounts requested by the Ports. The total amount of Shorepower funding requested by the Ports in the current NOFA equals \$100.4 million. The total 2008 funding round awards to shorepower totaled \$5.3 million. This leaves a balance in this Category Funding Target of \$54.3 million. In other words, of the \$154.7 million balance remaining in this funding category, the current Port request equals 64.9% of the Category funding. Given that this allocation represents \$500 million of the remaining \$750 million of Proposition 1B funds available to be awarded, or 66.67% of the total funding, the total amount requested by the Ports is on track with full Category funding.

In other words, if the current allocations to the Port of Oakland are not granted in this round, the shorepower Category Funding Target will have a balance of \$69.5 million going into the final round – but this runs precisely counter to the staff priorities that these funds must be provided earlier than other funds. When one considers the economic and environmental costs that may result from not fully funding the Port of Oakland's request, we fail to understand the basis for failing to fully fund the request during this current allocation. The fact is that if this money was to be provided to them in the final round then they would not have the resources available to deliver shorepower infrastructure in time to be prepared for the 2014 regulatory baseline, much less able to deliver additional emissions benefits over and above that baseline.

Moreover, we would respectfully request that the CARB staff acknowledge that time is of the essence with regard to these critical air quality infrastructure investments, and that by expediting the full and complete allocation of the requested shorepower grants not only will our communities breathe easier sooner, but we will put many thousands of Californians back to work and help set the Ports on firmer financial footing. In addition, please be reminded that investments in shore power infrastructure are an investment of public funds in capital projects managed by local public agencies tasked with developing public infrastructure on state-owned property for public benefit.

Thank you for your efforts to deliver maximum and early air quality improvements to the Ports and port communities. We appreciate the Board's commitment to providing the infrastructure necessary to deliver not only the baseline requirements of the CARB shorepower regulation but the early and extra emissions benefits that will accrue from Proposition 1B.

Sincerely,



Mike Jacob
Vice President

cc: Boardmembers, Air Resources Board
Cynthia Marvin, staff Air Resources Board
California Association of Port Authorities
Advocation, Inc.
KP Public Affairs
Shaw/Yoder/Antwih



June 10, 2010

Hon. Mary Nichols, Chairman
California Air Resources Board
1001 "I" Street
PO Box 2815
Sacramento, CA 95812

RE: Proposition 1B Allocation to the Bay Area AQMD for Port Shore Power

Dear Chair Nichols and Members of the Board:

It is imperative that CARB grant the Bay Area Air Quality Management District the complete \$38 million requested for shore power infrastructure at the Port of Oakland. This funding is critical if the Port is to successfully meet both its proprietary imperative of maintaining competitiveness and driving a significant portion of the California economic growth while simultaneously reducing air emissions and improving air quality.

As you are well aware, the application you received tracks all of the requirements of the revised CARB Guidelines for distributing 1B funds. And as CARB staff has acknowledged, it is imperative that as many 1B funds be frontloaded to the support of cold-ironing infrastructure as possible. With that in mind, we ask you to place the Port of Oakland on equal footing with its sister ports in Southern California which will receive 100% of their grant request funding in the Phase 1 Allocation as recommended by staff.

We are proud to support the Bay Area AQMD's application and implore you to do the right thing and fully fund the requested Phase 1 Allocation as requested by the Port.

Sincerely,

Jim Wunderman
Bay Area Council

Ellen Johnck
Bay Planning Coalition

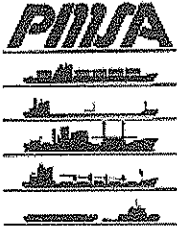
Wil Hardee
Oakland African American
Chamber of Commerce

Sugiarto Loni
Oakland Chinatown
Chamber of Commerce

Joe Haraburda
Oakland Metropolitan
Chamber of Commerce

John McLaurin
Pacific Merchant Shipping Association

Gunnar Lundeberg
Sailors' Union of the Pacific



March 24, 2010

Mary Nichols, Chair
California Air Resources Board
1001 "I" Street
Sacramento, CA 95812

**RE: Update to Proposition 1B Program Guidelines for Administration of the
"California Ports Infrastructure, Security, and Air Quality Improvement Account"**

Dear Chair Nichols and Boardmembers,

On behalf of the members of the Pacific Merchant Shipping Association (PMSA), I am writing to present our comments on the proposed Updates to the Guidelines for implementing the Proposition 1B Goods Movement Emission Reduction Program within the California Ports Infrastructure, Security, and Air Quality Improvement Account. PMSA represents ocean carriers and marine terminal operators which conduct business at all of California's public ports.

In order to deliver maximum and early air quality improvements at our Ports it is imperative that the Board maintain the maximum amount of funding possible for maritime sources and institute the maximum amount of program administrative flexibility for Ports to implement their own programs such that they maximize emissions reductions in the most cost-effective manner.

Keeping 1B funding for air quality improvements at the ports are not only of critical importance to the health of citizens in impacted communities throughout our state, but it is also of critical importance to the vitality and competitiveness of our maritime economy, which has been decimated by the global recession.

Our current economic challenges cannot be understated. Our industry is suffering through annual losses in the ocean carrier business totaling over \$20 billion, as a result of "a time when trade is undergoing its worst slump since World War II." (*Wall Street Journal*, March 5, 2010). In May of last year, *The New York Times* proclaimed that "[t]he current downturn has so badly battered shipping that it makes the auto industry look healthy by comparison." And, in October, *The Financial Times* quipped: "Recession rules of thumb, number one: however grim things get in your industry, they are worse in container shipping."

Since the passage of 1B in 2006, many aspects of the state's containerized trade and port economy have changed dramatically, especially given the fact that 2006 was California's cargo throughput peak. Since then, we have lost 23.6% of our containerized trade, from 18,151,814 teu's to 13,867,763 teu's in 2009, and over 30% of our total longshore labor shifts on the waterfront. These debilitating losses have not only obliterated the profitability of ocean carriers and terminals, but they have placed significant financial hackles on the ports themselves.

Pacific Merchant Shipping Association
250 Montgomery St., Suite 700, San Francisco, CA 94104 (415) 352-0710 fax (415) 352-0717

Another significant change in our industry since Proposition 1B was placed before the voters in 2006, has been the imposition by CARB of regulations on the ports and their private industry partners in the maritime supply chain that will ultimately cost over \$5 billion. As a result, our costs will continue to increase in the face of our revenues decreasing.

In the initial guidelines adopted by the Board in 2008, 50% of the total funds available in the "California Ports Infrastructure, Security, and Air Quality Improvement Account" was targeted specifically for Port purposes (\$500 million of the \$1 billion total). This is consistent not only with the intent of the legislature when placing Proposition 1B on the ballot but also with the will of the voters who approved these funds. As described in the very name of the account at issue here, the focus of the utilization of these funds needs to remain on the reduction of emissions from port-related sources. Of these funds, \$377 million remain unallocated after the first round of awards in 2008.

We respectfully request that the full identified need of the Ports' collective remaining cold-ironing costs be maintained in the revised guidelines. This would equal \$325 million. The remaining balance of some \$52 million can be retargeted towards on-road trucks as contemplated by staff. This \$325 million translates into the Ports having a 43% share of the remaining \$750 million in the "Ports ... Air Quality Investment Account."

We feel that this is not only a fair distribution given the history of Proposition 1B, the cost-effectiveness of cold-ironing and shoreside power projects, and the geographic distribution of the funding targets, but, more importantly these funds represent a total funding ratio of a little under 5:1 when compared to the remaining \$1.5 billion in private shorepower costs that will be spent just to reach the baseline regulatory condition. This ratio will only improve when one considers that the Proposition 1B funds cannot be used to achieve simply the baseline condition, but instead must result in early and/or extra emissions reductions above the regulatory benefits that the state will already be receiving from the cold-ironing regulations adopted by this Board.

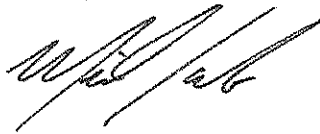
Moreover, we would respectfully request that the Board acknowledge that time is of the essence with regard to these critical air quality infrastructure investments, and that by expediting the administrative processes associated with the shorepower grants not only will the communities breathe easier sooner, but we put many thousands of Californians back to work. We ask you to consider making direct grants to the Ports to administer these funds and eliminate the need for additional competition for funds at the local level. These investments would be of public funds to local public agencies tasked with developing public infrastructure for public benefit. There are already multiple layers of oversight and scrutiny and all of the activities to be funded are subject to public review.

Chair Nichols
Proposition 1B Guidelines
March 24, 2010
Page 3

We appreciate the work to-date on these revisions done by the Board staff and we have commented extensively on the issues presented during the recent workshop process and over the course of the past year. Please find attached some of our previous comments regarding Proposition 1B and the Guideline revision process.

Thank you for your efforts to deliver maximum and early air quality improvements to the Ports and port communities. We appreciate the Board's commitment to providing the infrastructure necessary to deliver not only the baseline requirements of the CARB shorepower regulation but the early and extra emissions benefits that will accrue from Proposition 1B.

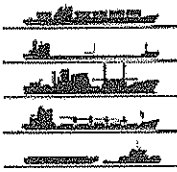
Sincerely,

A handwritten signature in black ink, appearing to read "Mike Jacob", written over a light blue horizontal line.

Mike Jacob
Vice President

Attachments

cc: Boardmembers, Air Resources Board
Cynthia Marvin, Air Resources Board
Advocation, Inc.
KP Public Affairs
Shaw/Yoder/Antwih



March 4, 2010

Ms. Barbara Van Gee, Manager
Goods Movement Programs Section
California Air Resources Board / PTSD
PO Box 2815
Sacramento, CA 95812

Comments – Concepts for Updates to Proposition 1B Program Guidelines

Dear Ms. Van Gee and Associates,

On behalf of the members of the Pacific Merchant Shipping Association (PMSA), I am writing to present our comments on the current Update process for the Proposition 1B Goods Movement Emission Reduction Program Guidelines. PMSA represents ocean carriers and marine terminal operators which conduct business at all of California's public ports. We appreciate the opportunity to further work with you and the rest of the Air Resources Board staff on revisions to the Prop. 1B Guidelines.

Please find attached our formal comments on the Guideline revision process. As you will recall at earlier workshops this week, we have commented that, in order to deliver maximum and early air quality improvements, that the Ports who apply for these funds be given the maximum amount of funding possible, preferably as much as requested, and also the flexibility to implement their own programs as they see fit.

We look forward to working with you on these issues over the next several weeks before Board consideration of revisions to the Guidelines. Please do not hesitate to contact me or any of my colleagues at PMSA with any questions, comments or assistance you may need.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Jacob", written over a white background.

Mike Jacob
Vice President

attachment
cc: Cynthia Marvin, Air Resources Board

Pacific Merchant Shipping Association
250 Montgomery St., Suite 700, San Francisco, CA 94104

(415) 352-0710

fax (415) 352-0717

Comments on CARB 1B Guideline Revision Process – Shorepower and Port Projects

SUMMARY

With respect to shorepower project funding, it is our view that the guideline revisions proposed do not go far enough to improve the administration of the 1B emissions reduction program and may actually hinder or create greater obstacles to full implementation. As it stands now, we believe that the guidelines are overly prescriptive, complex and fail to adequately fund capital projects. The proposed staff revisions do not alleviate these concerns.

ALTERNATIVE PROPOSED REVISIONS

In conversations following previous correspondence with the ARB, we were encouraged by staff to participate in the workshops and revision process and present our ideas on how to better the program – these comments are meant to continue that conversation and help ARB deliver the best air quality improvement projects possible.

To that end, we propose an alternative process. In our view, for the guidelines to work as intended, the revisions should make the shorepower rules as simple as possible, allow for the most cost-effective administration of bond funds, and give ports the ability to deliver early and extra emissions benefits in any myriad of creative and innovative ways.

We respectfully request that CARB adopt both of these alternative guideline revisions:

- I. Directly Allocate the Total Amount of Funds Needed for Each Port to Complete Their Grid-based Cold Ironing Infrastructure As Soon As Possible.
By directly telling each Port how much they will receive in total for their projects now we allow them to finance, plan and construct cold-ironing projects to completion. This will not only clean the air, but it will create jobs, invest public funds in publicly-owned assets, have state administrative savings, and has built-in private leveraging benefits.

And,

- II. Give Each Port the Responsibility and Flexibility to Meet the Current Early and Extra Emissions Reduction Goals As Required Under the Current Guidelines On A Port-wide Basis – Not Per Terminal.
Determining the amount of early or extra compliance to be achieved on a per-terminal or per-berth basis is fine, but the guidelines should be agnostic as to per-terminal compliance. Instead, since a set amount of total project dollars go directly to a Port, the guidelines should also aggregate emissions reductions from vessels at berth to be at the Port-level. This gives ports ultimate flexibility, allows them to be creative about generating emissions reductions, and encourages the most cost-effective investments of state funds.

ARGUMENTS FOR THE ALTERNATIVE REVISIONS

Revision I

CARB should significantly simplify the shorepower program by allocating a set amount of 1B funding to each port directly. Rather than engaging in needless additional up-front project-by-project screening and evaluation, CARB staff time would be limited to enforcing the terms of the allocation of these bond moneys.

There are a multitude of good reasons to embrace this approach:

- 1) Recognizes the Small, Limited Number Of Applicants
There are a discrete number of public ports in California, and of those eleven, not all of them would apply for these funds. In fact, only six have exposure to cold-ironing regulatory costs and have the mix of vessels in regular service that would be affected by the upcoming regulation; they are Long Beach, Los Angeles, Oakland, Port Hueneme, San Diego and San Francisco. That's the entire marketplace for this funding. In addition, each of these ports knows the exact number of berths that they need to provide cold-ironing infrastructure to and has an estimated amount of funds to complete this work. This is the opposite of an open-ended program to a very diverse and competitive marketplace full of thousands of competitors, such as the trucking marketplace being addressed by other portions of the guidelines, and the guidelines should reflect this.
- 2) Applicants are Public Agencies Building Public Infrastructure for Public Benefit, Often with the State of California Itself As Trust Asset Beneficiary
Ports are public agencies building public assets, not private companies or individuals receiving public money. In this instance, not only are the ports themselves public agencies at the municipal level or special local districts, but they are for the most part trust grantees administering State property on behalf of the State of California as trust beneficiary. Every dollar used in the 1B shorepower program should be used to build infrastructure owned by a public agency acting in its public capacity to create publicly-owned assets. They must manage their funds in a public process, with public accountability and follow all public agency rules. Yet, despite all of the public agency requirements, none of these ports have their own public revenue stream to support them – whether acting as stand alone special districts or proprietary departments of a municipality, they must derive all of their operating revenues, including debt service on capital improvements, from their tenants and customers.
- 3) CARB Should Not Be Creating Competitiveness Issues Between Ports
As noted above, there is not a private, competitive marketplace for these funds; rather, there are a small number of public agencies that looking at 1B moneys to help them build public infrastructure. If the guidelines stand, then CARB is in fact injecting maritime industry market competitiveness issues into its program. This is highly inappropriate.

Ports should not be discriminated against because they are larger or smaller, have better asset-to-debt ratios, or more cash on hand. Every port has significant needs, and must have equal access to bond funding - not included or excluded from 1B funds because they have a greater ability to pay the balance of project costs not covered under the guidelines. Yet, this is what will occur if the current or proposed guidelines remain structured the way they are currently – like an open competitive process. If, as a result, one Port receives funding from 1B and another Port does not for similar projects, then these grants have begun to impact competitiveness between California’s ports. If Los Angeles receives funds, then so should Long Beach, and so should Oakland – since all operate in similar container marketplaces. Same for San Diego and San Francisco with respect to their cruise vessel berths. These are all public facilities and, to the extent that the geographic target funding amounts are retained, none should be favored.

Moreover, the ports themselves are not subject to the shorepower regulations – only their ocean carriers. Ports have a competitiveness interest in providing shorepower infrastructure for the benefit of their customers, because otherwise they will suffer tremendous fines and penalties. If CARB does not equitably and completely distribute funds to all of the ports, it increases the likelihood that some ports will be benefited at the expense of others, because there are dramatic and real business decisions that will be made starting in 2014 based on the extent to which shorepower infrastructure is to be provided.

- 4) Creates Financial, Planning and Air Quality Improvement Certainty At the Ports
If CARB is to embrace this alternative guideline revision, it would in essence be operating more like a transportation funding agency, where a specific amount of state money is being promised to a specific entity to complete a specific project. This is certainly a more appropriate model for 1B shorepower funding because grid-based shorepower infrastructure is publicly-owned infrastructure being built by a public agency. It is much more akin to building a freeway than to retrofitting a privately-owned truck.

This alternative approach provides the benefit of certainty to both the State and to the local Port. Project planning is already underway and construction must start soon, with regulatory compliance dates only 45 months away. Port’s can build creative financing strategies around knowing that the State will be contributing, at some point in time in the near future, a set amount of funds to their project. This certainty allows them to move forward with projects quicker, cheaper and more cost-effectively – improving Port operations, creating jobs sooner and perhaps even creating the opportunity for early emissions reductions.

- 5) Shorepower Projects Have Built In Leveraging of Public Funds, Because Private Sector Matching Funds Are Assured By the Nature of the Projects
The current, and proposed, Guidelines which specify a port “match” (or a high-percentage share of project costs), are in reality asking a public port’s tenants and

customers to pay twice. This is because shorepower projects have built in private leveraging and matching costs if early or extra compliance is to occur.

This is the case because cold-ironing is, very literally, a plug-and-socket proposition. In order for shorepower to be effective you need both a plug and a socket. In this instance, it is our public ports that will be building the public infrastructure that ultimately prepares a berth to act as a socket. The plug must be provided by a private party – the ocean-going vessel operators that must pay to retrofit an existing ship or outfit a brand new vessel with cold-ironing capabilities. If early and extra compliance is to occur, as would be required if a port received 1B funding, the ships calling there will be called upon to produce the needed additional emissions reductions. That means one of two things must occur, entirely at private expense, either a ship must be equipped earlier than it otherwise is required to or more ships must be equipped than otherwise are required to. These private expenses are required directly as a result of the early and extra compliance requirements of the 1B funds administered by CARB.

As you are aware, ports derive their revenues from their tenants and customers, as they do not have their own direct tax revenue streams. If the guidelines require both a port match or share as well as early and extra compliance, then that ports' obligations are twice passed along to the private sector. Once in the direct costs of vessel equipment and then again in the fees charged to its tenants and customers to cover the cost of the match or project share. This is in effect asking for the maritime industry to pay upfront for the privilege of paying to over-comply with the State's own regulations.

Finally, the ports themselves are not subject to the shorepower regulations, as the only regulated party in the at-berth emissions reductions rules are the ocean carriers themselves. Not ports, not terminal operators, not electric utilities - just ships. Because the ports are not the regulated parties, they have no existing regulatory compliance baseline to meet, they have no penalties to pay if they don't provide shorepower infrastructure on time, they have no responsibilities under the rule; therefore, as the potential grant recipients of these funds, these public agencies will simply be building public assets with the funds. It is their private sector partners that must meet the underlying compliance thresholds or face fines and penalties, not the ports – and it is their private sector partners that must have their fleets upgraded on time in order to meet the additional early or extra compliance as well.

6) In the Current Regulatory Environment and Economic Condition of Trade, It Is Not Feasible To Try And Further Leverage 1B Funds

When Proposition 1B was passed in November of 2006, there was no CARB shorepower rule in place to reduce emissions from vessels at berth. When SB 88 was adopted by the Legislature, the shorepower rule was likewise not yet effective. Yet, as CARB has estimated, the total maritime industry costs of complying with the current shorepower rule are approximately \$1.8 billion. And,

the cold-ironing regulation is but one part of a suite of port-related regulatory enactments, which have a cumulative price tag of \$5 billion. These are costs to be borne by the ports and their customers which have no equal anywhere else in the world. California is the only jurisdiction that has attempted to do any of these initiatives in a sweeping comprehensive program – much less all of them simultaneously.

In addition to the costs, there is the effect of the interplay of the regulations with the stricture that the air quality funding not be applied in a manner where its sole purpose is for compliance with the law. In other words, no one should be allowed access to state bond funds where those funds would simply be paying them to comply with the law. Because when 1B was passed these rules were not yet in place, it was entirely appropriate to look at these funds strictly as incentives to assist the private sector clean-up the air – but now, they must be viewed within the context of the strictest set of goods movement and port regulations in the world. The need and capacity for incentives to provide additional or early compliance is a vastly different proposition for private sector actors than a true incentive.

In addition, given the state of the economy, in general, and the maritime industry specifically, it is hard to imagine how CARB expects the supply chain to provide the funding necessary upfront for these projects as well as additional compliance.

Since the passage of 1B in 2006, many aspects of the state's containerized trade and port economy have changed:

- 2006 was California's cargo throughput peak – and since 2006 we have lost 23.6% of our containerized trade, from 18,151,814 teu's to 13,867,763 teu's in 2009
- 2006 was also California's longshore labor peak – and since 2006 we have lost over 30% of our total longshore labor shifts on the waterfront
- The recession has further obliterated the profitability of ocean carriers and MTO's, placed significant financial hackles on the ports themselves, created thousands of unemployed workers, and threatens many of California's competitive advantages as new supply chains are created

The current economic downturn of the trade industry cannot be overstated:

- In May 2009, *The New York Times* proclaimed that “[t]he current downturn has so badly battered shipping that it makes the auto industry look healthy by comparison.”
- In October 2009, *The Financial Times* quipped: “Recession rules of thumb, number one: however grim things get in your industry, they are worse in container shipping.”
- And, the *Journal of Commerce* quoted a projection that “the container shipping and airline industries will book a combined loss in the region of \$20-\$30 billion for 2009.”

7) Direct Allocation Is Most Efficient Manner In Which to Administer Bond Funds

It is imperative that we all remember that the 1B funds in question are public moneys to be raised by a general obligation bond. Therefore, as the state agency administering these bond funds, CARB should adopt a fiduciary mindset and embrace the ethical duty it has to spend as little of these funds as possible on one-time administrative overhead. This is not only a moral imperative from the point of view that every dollar spent on CARB staff's own administration of the program is one less dollar going to an actual air quality improvement project itself, but because good public policy dictates that government invest bond funding in the highest-return spending for the purpose the bond is to be let. Current administrative overhead is always the lowest return in this regard and is anathema to any entity that must repay those costs at significant expense over a multi-year horizon. Given the current condition of the state budget, this is a more compelling issue for California than ever. The alternative recommendation would significantly reduce the administrative overhead of CARB staff time that is charged to the bond by limiting their role to directly distributing the funds and then monitoring the execution of the conditions of that distribution.

Revision II

CARB should ensure that the guidelines do not micro-manage port strategies to reduce emissions. Rather than CARB engaging in a berth-by-berth analysis and evaluation, or only directing money to specific terminals, the ports would instead be given maximum operational flexibility in how to achieve all of its early and extra at-berth emissions reductions from ocean going vessels. As in Revision I, CARB staff time would be limited to enforcing the terms of the allocation of these bond moneys with each port on a port-wide basis.

This is the most efficient and cost-effective method in which to achieve Proposition 1B's promise of cleaner air from port operations, as well as the multiple goals of SB 88 in implementing 1B. It puts the day-to-day challenges of meeting the early and extra compliance goals of CARB in the hands of the proprietary local public agencies that must both raise revenue from its tenants and customers and enforce the terms of its 1B distribution. Facing these economic and legal pressures, each port will have an incentive to be most creative, cost effective and efficient in achieving air quality improvement.

Specifically, CARB should embrace this approach for all of the following reasons:

1) Ports Are Equally Accountable to CARB for Compliance With Air Quality Improvement Standards On a Port-wide Rather As On a per-Berth Basis

The Guidelines should simply identify the amount of early or extra compliance necessary to be achieved at each port that receives its full share of cold-ironing infrastructure funding, and then task the recipient Port with determining how best to achieve these additional emissions reductions. Ports will manage their own

infrastructure – whether it be at-berth, on-terminal or off-terminal – in order to provide the shorepower infrastructure necessary to provide the air quality benefits prescribed. As the physical construction and capital costs will vary from port to port and from terminal to terminal and from berth to berth. The costs of operational disruptions during construction will also vary dramatically, as well as the business conditions at the port in question. Yet, all of these costs are aggregated at the Port level. Emissions benefits may also be aggregated at the Port level – making the Port as a whole just accountable to CARB as they would be on a per-berth or per-terminal level.

A per-berth emissions reduction rule may have made some sense if marine terminal operator tenants of the public ports were applying for the funds directly, were responsible for improving the property, owned the assets, were ultimately responsible for the completion of a project, and could compel the early or extra compliance necessary from an ocean carrier. But none of those are the case. The ports remain responsible. And just as the aggregation of funds to the ports makes sense, so does the assignment of the conditions that attach to those funds.

2) No Additional Emissions Benefits Result From More Prescriptive Per-Berth Emissions Reduction Requirements

Giving the ports the flexibility to determine for themselves how to meet the terms of their 1B grant will deliver the same amount, if not more or earlier, emissions reductions than CARB setting specific prescriptive per-berth requirements. From an overall emissions reductions perspective, the air quality benefits would be identical to those sought in the current guidelines. Nothing is gained by CARB insisting that the early or extra emissions benefits accrue specifically from the berth that is being upgraded at a Port.

In fact, the 1B Guidelines are actually stricter than the shorepower rule is in this regard. Under the cold-ironing regulation, what is key is the percentage of visits and time that your vessels have shut down their engines while at berth – there is no need to discern which terminals an ocean carrier is calling on at any one particular port. Likewise here, CARB should not dictate that emissions reductions can only be generated specifically from one facility at a port and not another.

How does creating this flexibility allow a port to make good decisions that can accelerate air quality improvements and cost-effectiveness? Consider this:

- A Port has Berth A + Berth B, which are contiguous to each other and identical in every way but Berth A is electrified now and Berth B electrification will not be complete until 2014. Under our alternative Revision II, the Port would use 1B funds to build the cold-ironing infrastructure at Berth B and could provide emissions reductions now from Berth A. Those emissions reductions would be aggregated at the Port level. Contrast this with the proposed Guideline revisions, which would prohibit the port from providing early emissions reductions altogether.

There are no air quality benefits that result from a per-berth prescription of how and where emissions reductions are to occur. Indeed, we believe that many potential opportunities for emissions reductions that could occur through creative and innovative application of port-wide goals might be missed by focusing on per-berth emissions reductions. We respectfully suggest that by allowing the ports to manage their own tenant and customer relationships, and juggle their own responsibilities, strengths and weaknesses, business considerations, costs and benefits, and manage their own berths and terminals, that the results will be just as good, if not better, for air quality and for the ports' bottom line.

3) A Port-wide Aggregation Encourages Early Compliance

Because of the focus on per-berth performance, CARB staff's proposed Guidelines revision makes the logical conclusion that the early compliance option would be hard to achieve for many ports and suggests that it be removed. Yet, early compliance is exactly what voters and the Legislature thought that they were getting with Proposition 1B and SB 88. Moreover, this runs counter to both the air quality and the economic needs of Californians.

From a public health and air quality perspective, early emissions reductions well ahead of rule implementation has not only the most cost-effectiveness but also the most significant public health benefits. Providing an initial large reduction in emissions yields greater improvement in our air and in public health than marginal reductions five years from now. Likewise, our present economic condition compels that these important public infrastructure projects try to foster early compliance – so they get underway as soon as possible, putting Californians back to work building new public works.

Eliminating early compliance as an option is also clearly out-of-line with the will of the voters and the promise of 1B. Voters voted for air quality benefits from investment in ports. It was not the intent of the measure that the outside date of receiving public benefits from the air quality funds would not materialize until 2014 – which is even beyond the outside date by which infrastructure projects must be under construction. The concept for the bond was very clearly in step with the thinking in the Administration's Goods Movement Action Plan for continuous and simultaneous improvements between infrastructure and emissions.

Likewise, SB 88's implementation of the 1B in that regard lays out a good roadmap for how to spend this money quickly, wisely and prudently. It emphasizes the need for speed, as the overriding emphasis in SB 88 is to spend the money to reduce public health impact and environmental degradation.

This unfortunate conclusion can easily be avoided by simply granting the ports a distribution of funds equal to their total need and then allowing them to determine who, how and where it can best deliver early or extra air quality benefits.