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VIA E-MAIL

Tom Cackette, Acting Executive Officer  
California Air Resources Board  
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**September 27, 2007 Agenda Item # 07-7-7 (Public Meeting to Consider Approval of the Proposed State Strategy for California's State Implementation Plan (SIP) for the Federal 8-Hour Ozone and PM<sub>2.5</sub> Standards): COMMENTS ON PROPOSED FUNDING REQUEST TO OFFSET LOCOMOTIVE EMISSIONS IN STATE IMPLEMENTATION PLAN**

Dear Mr. Cackette:

The Class I freight railroads operating in California appreciate the opportunity to provide further comment on this upcoming Board approval item.

An Attachment to staff's proposed California State Implementation Plan (SIP) amendments contains a paragraph indicating the:

"...federal government should provide funding [to the State of California] to mitigate the impacts of federal sources that are less well controlled than California regulated sources in order to meet the PM<sub>2.5</sub> attainment deadline. Locomotives operating in the South Coast [of California] would produce 10 tpd [tons per day] of excess NO<sub>x</sub> emissions in 2014 because the USEPA's proposed new engine standards for NO<sub>x</sub> are not expected to be fully implemented until 2017. This 10 tpd target is equivalent to the emission reductions that would have been achieved had U.S.EPA adopted its proposed Tier 4 NO<sub>x</sub> locomotives standard in time for the State [of California] to work to convert all locomotives operating in the basin to Tier 4 by 2014." Revised Staff Proposal, Attachment titled September 14, 2007 3-Agency Staff Document: "Meeting the South Coast District's PM<sub>2.5</sub> Emission Reduction Target," at p. 2.

The railroads oppose including this statement in the state's SIP submission to EPA for several technical, policy, and other reasons set out below. From a basic factual and

Tom Cackette, Acting Executive Officer  
September 26, 2007  
Page 2

technical perspective, this statement in the Attachment is based on an erroneous assumption about what is technically possible with respect to controlling emissions from locomotives. The Class I freight railroads operating in California also view it as inequitable. From a policy and legal perspective, the railroads also believe it is clearly inappropriate to include such a proposal in an official State of California SIP submission to USEPA.

*First*, in the industry's view, USEPA has not failed in any of its responsibilities to control locomotive emissions. The implication in the Attachment is that USEPA should make the effective date for Tier 4 emissions standards earlier than proposed. There is no technical basis for asserting the effective date for the Tier 4 standards can be accelerated. The USEPA has been working diligently to adopt additional locomotive emission rules, expending considerable time and effort working to develop a rational, technically sound, and feasible rule to reduce locomotive emissions in the Tier 3 and 4 control programs that will roll out over the next decade. Any such rulemaking, however, must reflect the realities of what locomotive manufacturers can actually achieve. The railroads themselves do not design or manufacture locomotives and must rely on the ability of the locomotive builders to improve technology in this small and specialized manufacturing sector.

Furthermore, the current USEPA locomotive rulemaking proceeding, regardless of the adoption date for the Tier 4 standards, could never have delivered the 10 tons per day emission reduction target identified in the Attachment to the proposed SIP submission. Discussions with ARB staff indicate this number is based upon the assumptions that (1) locomotive technology capable of reducing emissions by 90% from current levels would be commercially available by 2012, and (2) the entire United States locomotive fleet would be replaced or upgraded to this new (yet to be proven in practice for freight locomotives) technology between 2012 to 2014 or there would be a new fleet average agreement in Southern California fully implemented in 2014. Leaving aside the completely groundless assumption that locomotives achieving 90 percent reductions could be available in 2012, the rate of fleet turnover would be far longer than the three years allowed for under any scenario.

*Second*, singling out locomotive emissions controls for special criticism as the Attachment does is inequitable. As the Attachment recognizes, interstate trucks and marine vessels are also under federal jurisdiction, and yet the supposed emissions shortfalls associated with these sectors are not targeted for federal funding or quantified.

Tom Cackette, Acting Executive Officer  
September 26, 2007  
Page 3

Additionally, while the measure appears to target the USEPA, it clearly suggests a failure on the part of the railroads or the locomotive manufacturers to reduce emissions and thus, it is apt to be misused to suggest: (1) fees should be imposed on the railroad industry, or (2) the authority to regulate locomotive emissions should be shifted. This compounds the inequity of the staff proposal, especially when only the Class I railroads in California are implementing an end-user fleet average.

The California railroad industry is the only industry subject to federal control (and the associated preemption) that has voluntarily and cooperatively worked with ARB to significantly reduce emissions from its operations in California. Beginning with the 1998 Fleet Average Agreement, and continuing with the 2005 Memorandum of Understanding, this cooperation has yielded real and substantial air quality benefits to the people of California, particularly those in the South Coast Air Basin. As stated in the 1998 Fleet Average agreement, that program “represents the most aggressive scrappage and replacement program of any transportation source.” ARB and USEPA agreed with that conclusion then and it is still true a decade later. When fully implemented in 2010, this voluntary and now fully enforceable program will have achieved a two-thirds reduction in NOx emissions from levels predicted in the 1994 SIP, along with commensurate PM<sub>2.5</sub> reductions. In this regard, the railroads do appreciate that the Revised Staff Proposal acknowledges the significant benefits achieved by the MOUs: “Existing agreements with the rail industry are reducing emissions in the South Coast Air Basin beyond federal requirements.” See Section 1, page 4.

During the last decade, despite numerous efforts by ARB and others, no other industry has stepped up to provide real and quantifiable emission reductions in California the way the railroads have. And yet, only locomotives are singled out in the current SIP amendments for a supposed failure by the USEPA to act aggressively enough to promulgate rules requiring further reductions.

**Third**, it should also be noted that, to the extent the current SIP submission may seek to impose obligations upon USEPA, it does not meet well-established federal criteria for approvable SIP measures. “All creditable emission reductions must be real, permanent, and enforceable.” (USEPA, General Preamble, 57 Fed. Reg. 13498, at 13509 (April 16, 1992) (emphasis added)). Of course, the state has no actual legal authority to compel the “federal government” to provide funding (let alone any basis for asking USEPA to do so). Thus, this part of the submission does not constitute any current “real” or “enforceable” emission reduction. This part of the proposed SIP submission also conflicts with the long-standing and well-founded requirements of California Health and Safety Code section 39602, which specifically prohibits the inclusion in the federally-

Tom Cackette, Acting Executive Officer  
September 26, 2007  
Page 4

enforceable California SIP of any provision not necessary to meet the requirements of the Federal Clean Air Act.

### CONCLUSION

In our view, in order to have a credible and approvable SIP, the ARB Board should decline to adopt any statement regarding the 10 tons per day target attributable to locomotives, any suggestion that USEPA's proposed locomotive emissions standards are inadequate, and the Attachment proposal for federal funding in connection with locomotive emissions. To do otherwise would inequitably target the one industry in California that has voluntarily come to the table to work with the State to reduce emissions from its operations – not once but twice over a decade.

Very truly yours,



Michael R. Barr

cc: Mary D. Nichols, Chair, ARB  
Mike Scheible, Deputy Executive Officer, ARB  
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