

THE CALIFORNIA RAILROAD INDUSTRY

April 28, 2011

Lucille van Ommering
Manager of the SIP and Local Government Strategies Section
Air Resources Board
1001 I Street
Sacramento, CA 95814

RE: California Freight Railroad Industry Comments on Item 11-2-4: Public Hearing to Consider the Approval of a Progress Report and Proposed State Implementation Plan Revisions for PM2.5.

Dear Ms. van Ommering:

The Class I freight railroads operating in California (the Railroads) appreciate the opportunity to comment on ARB's Progress Report on Implementation of the PM2.5 State Implementation Plans (SIP) for the South Coast and San Joaquin Valley Air Basins and Proposed SIP Revisions Release (2011 Progress Report).

The Railroads previously submitted comments to ARB regarding the 2007 SIP on April 4, 2007 and again on September 26, 2007. These letters are attached for your reference. The 2011 Progress Report and associated proposed amendments to the 2007 SIP do not change the Railroads concerns regarding the locomotive measure in the SIP (ARB-OFRD-02) nor our concerns about the ARB's failure to justify or explain your arbitrary determination that there was a 10 ton per day shortfall of NOx created by the stringency and/or the timing of the promulgation of the US EPA's rulemaking for locomotives. Our comments are briefly reiterated below.

First, the Railroads have three primary concerns regarding the disparity between the 2007 SIP locomotive measure (ARB-OFRD-02) and US EPA's 2008 final locomotive standards:

1. ARB's SIP measure for line-haul locomotives anticipates emission reductions, which are inconsistent with US EPA's promulgated emission standards for locomotive engines, as published in the Federal Register on May 6, 2008.¹
2. ARB's SIP measure anticipates an implementation schedule which is inconsistent with US EPA's final rule, and with many provisions of the draft rule.
3. ARB's SIP measure anticipates an introduction rate which is inconsistent with normal fleet turnover in California.

¹ 73 Fed. Reg. 25098. EPA later republished the final rule to include technical corrections on June 30, 2008 at 73 Fed. Reg. 37236.

Second, the Railroads also oppose the inclusion of the "request" for US EPA to accept a 10-tons per day of NOx assignment to reduce emissions from federal sources.

1. US EPA has not failed in any of its responsibilities to control locomotive emissions.
 - a. The 2008 US EPA emission standards for locomotives are rational, technically sound, and feasible and will substantially reduce locomotive emissions.
 - b. The US EPA rulemaking reflects the technical realities of what locomotive manufactures can actually achieve.
2. The Railroads believe that the purported 10 ton "shortfall" is based on incorrect-assumptions by the SCAQMD staff, ARB staff, or both that if the timing and stringency in US EPA's advanced draft emission standards² (published in 2004) had been promulgated in the 2008 final regulation, somehow the regulation would have provided an additional 10 tons per day of NOx reductions in the South Coast Air Basin by 2014.

Discussions with ARB staff have indicated that this 10-ton estimate was based on ARB's assumptions that:

- a. locomotive technology that can reduce NOx and PM emissions by 90% from the 2007 levels will be available by 2011 (even though the advanced draft rule was explicit that the 2011 date qualified as being an "as early as" date);³ and
- b. the entire US locomotive fleet would be replaced or upgraded to this new technology between 2012 and 2014 or there would be a new fleet average agreement in Southern California fully implemented in 2013 (even though the last fleet average was not fully implemented until 2010 and represented a substantial turnover of locomotives serving California).

Leaving aside the unsupported and fundamental assumption that line-haul locomotives achieving 90 percent reductions were going to be available in 2012, such a national fleet turnover rate would be decades longer than the two years asserted by the ARB staff.

3. Asking US EPA to voluntarily accept a 10-ton assignment does not meet well-established federal criteria for approvable SIP measures.
 - a. "All credible emission reductions must be real, permanent, and enforceable." (US EPA, General Preamble, 57 Fed Reg. 13498, at 13509 (April 16, 1992)).
 - b. California has no legal authority to compel the "federal government" to provide funding to reduce 10 tons of NOx. Thus, this part of the SIP does not constitute any "real" or "enforceable" emission reductions.

² EPA released an Advanced Notice of Proposed Rulemaking on June 29, 2004 - See 69 Fed. Reg. 39276. When EPA released its Proposed Rulemaking on April 3, 2007, EPA indicated that new emission standards "would phase in beginning in 2015 for locomotives..." and that these standards might achieve a 90% PM2.5 reduction and an 80% NOx reduction. See 72 Fed. Reg. 15938.

³ See 69 Fed. Reg. 39276, 39279, 39280, 39281, and 39282.

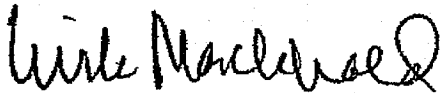
- c. This proposal also conflicts with the long-standing and well-founded requirements of the California Health and Safety Code, section 39602, which specifically prohibits the inclusion in the federally-enforceable CA SIP of any provision not necessary to meet the requirements of the Federal Clean Air Act.

The Railroads are the only federal source that has voluntarily agreed to significantly reduce emissions in California, not once, but three times since 1998. Two agreements are in effect and a third agreement is currently undergoing environmental review.

This proposal unfairly and inexplicably singles out the only federal source in California that is achieving emissions reductions above and beyond federal standards and couples that by asserting that there has been an alleged failure by the US EPA to not carry out provisions of a rulemaking that it never proposed to implement.

The Railroads have a long history of working cooperatively with ARB and US EPA to help address air quality issues in California. We look forward to continuing these efforts. Please contact me to discuss any of these issues further at 415-421-4213 x12 or kirk@ceaconsulting.com.

Sincerely,



Kirk Marckwald
On behalf of Union Pacific Railroad and BNSF Railway

cc Mary Nichols, ARB
Bob Fletcher, ARB
Lanny Schmid, Union Pacific Railroad
Dave Seep, BNSF Railway
Michael Barr, Pillsbury Winthrop Shaw Pittman

Attachments: April 4, 2007 Comments and September 26, 2007 Rail Comments to ARB

CALIFORNIA
CEA ENVIRONMENTAL
ASSOCIATES

April 4, 2007

Mr. Kurt Karperos
Chief, Air Quality and Transportation Planning
California Air Resources Board
1001 I Street
P.O. Box 2815
Sacramento, CA 95812

Re: Railroad Industry Comments on the Air Resources Board's Proposed State Strategy for California's 2007 State Implementation Plan

Dear Mr. Karparos:

On behalf of the Association of American Railroads and the Class I freight railroads operating in California (the Railroads), we appreciate the opportunity to provide comments on the Air Resources Board's Proposed State Strategy for California's 2007 State Implementation Plan (Draft SIP). The Railroads look forward to continuing to work cooperatively with ARB staff as you move forward towards a final plan.

Overview

The Railroads have several policy concerns and one technical concern with the Draft SIP measures for locomotives. Each of these areas is listed below and discussed in more detail in the remainder of this document.

Policy Concerns

1. ARB's Draft SIP measure for line-haul locomotives anticipates emission reductions which are inconsistent with U.S. EPA's proposed standards for locomotive engines as published in the Federal Register on April 3, 2007¹
2. ARB's Draft SIP measure for line-haul locomotives anticipates an implementation schedule which is inconsistent with U.S. EPA's NPRM.
3. ARB's Draft SIP measure for line-haul locomotives anticipates an introduction rate which is inconsistent with normal fleet turnover in California.

¹ Control of Emissions of Air Pollution from Locomotive Engines and Marine Compression-Ignition Engines Less than 30 Liters per Cylinder, 72 Fed. Reg. 15938 (proposed April 3, 2007) (to be codified at 40 C.F.R. parts 92, 94, 1033, 1039, 1042, 1065 and 1068).

Technical Concern

1. ARB's Draft SIP measure for line-haul locomotives uses the term "statewide fleet." The Railroads ask that this term be clarified.

Policy Concerns

1. ARB's Draft SIP measure for line-haul locomotives anticipates emission reductions which are inconsistent with U.S. EPA's proposed standards for locomotive engines as published in the Federal Register on April 3, 2007.

The Draft SIP measure for line-haul locomotives states: "U.S. EPA is expected to propose new Tier 3 standards that are anticipated to reduce NOx and PM emissions by 90 percent." EPA's NPRM "estimates PM reductions of 90% and NOx reductions of 80% from engines meeting these standards, compared to engines meeting the current standards."² The Draft SIP should be revised to reflect the proposed EPA emissions standards for locomotive engines.

2. ARB's Draft SIP measure for line-haul locomotives anticipates an implementation schedule which is inconsistent with U.S. EPA's NPRM.

The Draft SIP measure "calls for replacing existing locomotive engines with Tier 3 engines beginning 2012 and conducting concurrent rebuilds of older engines to Tier 2.5 standards." EPA's Proposed standards will be applied in 4 stages, starting with (1) new standards for remanufactured Tier 0 and Tier 1 locomotives starting between 2008 and 2010, (2) remanufactured Tier 2 locomotives starting between 2008 and 2013, (3) new Tier 3 locomotives starting in 2012, and (4) new Tier 4 locomotives starting between 2015 and 2017. The Draft SIP measures should be revised to reflect the proposed EPA implementation schedule. Furthermore, the SIP's expected emission reductions should also be modified based on the proposed EPA schedule.

3. ARB's Draft SIP measure for line-haul locomotives anticipates an introduction rate which is inconsistent with normal fleet turnover in California.

The Draft SIP measure for line-haul locomotives "calls for replacing existing locomotive engines with Tier 3 engines beginning 2012 and conducting concurrent rebuilds of older engines to Tier 2.5 standards. Each year 10 percent of the existing engines would be replaced by Tier 3 engines and 5 percent upgraded to Tier 2.5 standards until 100 percent of the statewide fleet has been upgraded." The measure indicates that this turnover would be accomplished through a "voluntary agreement to accelerate implementation" in 2008. ARB's SIP measure should assume normal fleet turnover rather than take SIP credit for any speculative voluntary agreement which has not been discussed by ARB with the Railroads either in principle or as to specifics.

² Id. Page 15398

If you have any questions or would like to discuss any of these issues further, please call me any time. My phone number is 925-339-3500 and my email address is peter@okurowski.com.

Sincerely,

Peter Okurowski
Senior Associate
California Environmental Associates



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September 26, 2007

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VIA E-MAIL

Tom Cackette, Acting Executive Officer
California Air Resources Board
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Sacramento, CA 95812

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_{2.5} 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_{2.5} attainment deadline. Locomotives operating in the South Coast [of California] would produce 10 tpd [tons per day] of excess NOx emissions in 2014 because the USEPA's proposed new engine standards for NOx 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 NOx 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_{2.5} 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

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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.

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_{2.5} 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-

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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
Lynn Terry, Deputy Executive Officer, ARB
Tom Jennings, Chief Counsel, ARB
Robert Jenne, Senior Staff Counsel, ARB