

Statement of Principles
South Coast Locomotives Program

I. Parties

1. The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company, which are Class I freight railroads operating within the boundaries of the South Coast Nonattainment Area ("Participating Railroads"), the United States Environmental Protection Agency ("EPA"), and the California Air Resources Board ("CARB") (collectively "the Signatories" or "the parties") recognize the importance of preserving the environment while maintaining a strong and viable railroad industry. The Participating Railroads have volunteered to become a leader in environmental protection by joining with CARB and EPA in a unique, innovative, and cooperative effort to achieve cleaner air in the South Coast Ozone Nonattainment Area of California. This Statement of Principles ("SOP") describes the joint understanding of the Signatories and the future actions that are intended to be undertaken by the Participating Railroads, CARB, and EPA.

II. Background

2. Locomotives are an environmentally efficient way to move goods [See EPA's Notice of Proposed Rulemaking for locomotives at 62 Fed. Reg. 6368 (Feb. 11, 1997)]. Railroads operate national locomotive fleets that travel between states daily, currently moving more than 40 percent of the total intercity revenue ton-miles of freight in the United States. Railroad networks are geographically widespread across the country, serving every major city in the United States. Efficient train transportation is an important factor in the regional and national economy. Railroads continue to improve their efficiency and reduce emissions per ton-mile by utilizing more efficient locomotives, improving freight movement operations, and other means.

3. EPA proposed emissions standards for new locomotives and new engines used in locomotives on January 31, 1997, pursuant to Section 213 of the Clean Air Act ("CAA" or "the Act") [See 62 Fed. Reg. 6366 (Feb. 11, 1997)]. In the same notice, EPA also proposed to adopt regulations to implement CAA Section 209's ~~preemption of state and local~~ standards or other requirements relating to the control of emissions from new locomotives or new engines used in locomotives. If promulgated and implemented as proposed, these standards are expected to achieve significant reductions in emissions of air pollutants from new locomotives (including remanufactured locomotives), including 39 percent overall reductions in oxides of nitrogen ("NO_x") emissions from locomotives by 2010. The Participating Railroads and CARB agree that EPA's proposed emissions standards represent a reasonable approach to achieving the greatest degree of emissions reductions achievable from new locomotives and new locomotive engines.

4. The South Coast Ozone Nonattainment Area ("South Coast") has exceptional and unique emissions reduction needs. The area's exceptionally high levels of ozone pollution result from the large amount of emissions generated in the South Coast air basin, combined with the area's adverse meteorology and topography. The South Coast is the only area classified under the CAA as an Extreme nonattainment area for ozone. This area has, and will continue to have, unique air quality problems which necessitate unique, exceptional solutions. Because of these circumstances, some sources operating in the South Coast have been required to undertake more stringent levels of control of air pollutant emissions than are required for any other area of the nation.

5. In 1994, CARB adopted Measure M-14 into California's State Implementation Plan ("SIP") for the South Coast Ozone Nonattainment Area. In Measure M-14, for 2010, CARB assumed locomotive emissions reductions from EPA's national emissions standards, plus additional reductions in the South Coast from locomotives. Measure M-14 contemplates about a 67 percent reduction from the SIP baseline level in emissions of NO_x from the locomotive fleet operating in the South Coast by 2010, which is approximately 72 percent greater than the NO_x reductions expected to result from EPA's emissions standards, if finalized as proposed.

III. CARB and Participating Railroad Agreement

6. As noted in Section IV, Paragraph 10 below, the parties fully expect that the attached Memorandum of Mutual Understandings and Agreements for the South Coast Locomotive Fleet Average Emissions Program Agreement ("Agreement"), when entered into and fully implemented, will achieve the emissions reductions in the South Coast contemplated by M-14 in 2010, beyond the reductions expected to result through implementation of EPA's national emissions standards for new locomotives and new engines used in locomotives. The Participating Railroads and CARB voluntarily intend to enter into the Agreement within 60 days of publication of EPA's final emissions regulations for new locomotives and new locomotive engines, if the following conditions are satisfied: (a) EPA adopts final Tier II NO_x emission standards for new locomotives and new locomotive engines consistent with its January 31, 1997 proposed standards, and (b) EPA adopts regulations to implement CAA Section 209(e) consistent with its January 31, 1997 proposal. In addition, EPA commits to adopt a backstop commitment provision as described in Section IV, Paragraph 10, below.

7. ~~In complying with the Agreement, the Participating Railroads expect to accelerate the~~ introduction and use of cleaner, lower-emitting locomotives in the South Coast. The Participating Railroads are voluntarily entering into the Agreement with CARB. The Agreement is a product of extensive consultation and discussion among the parties.

8. The parties understand and acknowledge that implementation of the Agreement under consideration will have substantial operational and financial impacts on the Participating Railroads over and above the cost of compliance with EPA's proposed emissions standards

for new locomotives and new locomotive engines. These additional costs and impacts result from the Participating Railroads' accelerated introduction and use of lower-emitting new locomotives into the South Coast Ozone Nonattainment Area and from reductions in their operating flexibility due to the need to concentrate lower-emitting locomotives in the South Coast. A patchwork of different state and local programs would be an inefficient, costly, and time consuming disruption of interstate commerce.

9. The Participating Railroads, CARB, and EPA intend to consult and reasonably share information concerning implementation of the Agreement, and concerning the status and findings of the study called for in the backstop commitment, before any determination is made by the Administrator.

IV. EPA Actions

10. The parties expect that the technology necessary to comply with the Agreement will be available and that sufficient lower-emitting locomotives will be available for use in the South Coast to achieve the reductions in M-14 in 2010 and the Agreement. The parties fully expect that the Agreement, when fully implemented, will achieve the emissions reductions contemplated by M-14 in 2010, beyond the reductions expected to result through implementation of EPA's national emissions standards for new locomotives and new engines used in locomotives. However, EPA and CARB also believe that to fully satisfy their respective obligations pursuant to EPA's approval of the attainment demonstration for the South Coast in California's 1994 SIP, the Agreement must be accompanied by EPA's commitment to promulgate federal regulations to ensure that the reductions called for in the Agreement are credited and achieved. For these reasons, EPA has reserved and intends to exercise its authorities under the CAA to ensure that the emissions reductions in the South Coast called for in the Agreement are achieved through a backstop to the Agreement. To this end, EPA intends to commit to adopt regulations as necessary that would assure that the emissions reductions called for in the Agreement for the South Coast are achieved from the railroads and/or, if necessary, from other national transportation sources. EPA intends to promulgate such a commitment and establish appropriate SIP credits through notice and comment rulemaking at the conclusion of the Public Consultative Process established in conjunction with approval of the South Coast attainment demonstration [See 40 CFR 52.238]. EPA intends to propose the attached backstop commitment provision in the rulemaking.

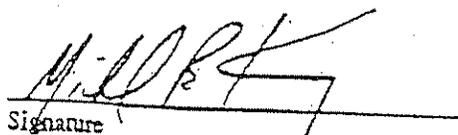
V. Additional Provisions

11. The parties understand and acknowledge that the joint understandings and future actions described in this SOP will contribute to efforts in the South Coast to achieve attainment of the national ambient air quality standard for ozone. EPA, CARB, and the

Participating Railroads are committed to working together to ensure that the emission reductions uniquely required by the Agreement are achieved.

IN WITNESS WHEREOF, the parties have executed this Statement of Principles as of _____, 1997.

CALIFORNIA AIR RESOURCES BOARD,
an agency of the State of
California


Signature

Michael P. Kenny
Name (printed)

Executive Officer
Position

May 14, 1997
Date

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, an agency of
the United States of America

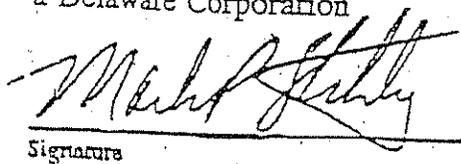

Signature

Mary D. Nichols
Name (printed)

Assistant Administrator for
Position Air and Radiation

May 14, 1997
Date

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY,
a Delaware Corporation

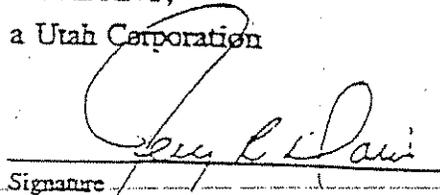

Signature

Mark P. Stehly
Name (printed)

Asst Vice President Environmental
Position and Hazardous Materials

May 14, 1997
Date

UNION PACIFIC RAILROAD
COMPANY,
a Utah Corporation


Signature

Jerry R. Davis
Name (printed)

President & COO
Position

May 14, 1997
Date

May 8, 1997

PROPOSED REGULATORY TEXT OF BACKSTOP COMMITMENT

- (A) EPA recognizes that the Class I freight railroads operating in the South Coast Ozone Nonattainment Area ("railroads") have voluntarily entered into the Memorandum of Mutual Understandings and Agreements -- South Coast Locomotive Fleet Average Emissions Program ("Agreement") with the State of California to achieve NOx emissions reductions from the railroad fleet in the South Coast beginning in 2010 that are equivalent to the emissions reductions contemplated for 2010 by Measure M-14 of California's 1994 Ozone State Implementation Plan.
- (A) No later than January 1, 2006, the Administrator shall undertake a study to determine if the railroads will be unable to comply with the Agreement in 2010. This study shall consider information provided by the railroads pursuant to the Agreement, and any other information that is relevant and available. On or before June 1, 2004, the Administrator shall consult with the California Air Resources Board ("ARB") and the railroads about the obligations in this subparagraph. By April 1, 2006, and each year thereafter until 2010, the railroads shall provide to EPA the following information on their operations during the preceding calendar year: (1) the number of uncontrolled, Tier 0, Tier I, and Tier II locomotives nationwide [as defined in 40 CFR Part 92] and the NOx emissions or NOx emission certification levels of each; (2) projected changes in the NOx emissions characteristics of their locomotive fleet nationwide, including remanufactures [as defined in 40 CFR Part 92] and new acquisitions before 2010; and (3) estimated fuel consumption data for their locomotive operations in the South Coast Nonattainment Area. Upon request of a railroad, EPA may modify the above requirement in whole or in part if it determines that providing such information would impose an unreasonable burden on the railroad. EPA may reasonably require additional information to assist EPA's determinations. Based on this study and all available new information, EPA shall determine no later than January 1, 2008, and January 1, 2010, whether the railroads will be unable to achieve the emissions reductions called for in the Agreement. If the Administrator finds that the railroads will be unable to achieve such reductions in 2010, then, pursuant to authority under the Clean Air Act, the Administrator shall propose and take final action on NOx emissions control measures as necessary to achieve such reductions from the railroads and/or, if necessary, from other national transportation sources, effective upon termination of the Agreement.
- (A) On July 1, 2011, and every two years thereafter, based on the information provided to CARB pursuant to the Agreement, the Administrator shall make the following determinations: (1) a determination as to whether the railroads are not achieving the emissions reductions called for in the Agreement, and (2) a determination as to whether the railroads will be unable to achieve such reductions two years after the year in which such determination is made. If the Administrator finds that the railroads are not

achieving such reductions, or that they will not be able to achieve such reductions two years after the year in which the determination is made, then pursuant to authority under the Clean Air Act, the Administrator shall propose and take final action on NOx emissions control measures as necessary to achieve such reductions from the railroads and/or, if necessary, from other national transportation sources, effective upon termination of the Agreement.

federal register

Thursday
April 16, 1998

Part II

Environmental Protection Agency

40 CFR Parts 85, 89 and 92
Emission Standards for Locomotives and
Locomotive Engines; Final Rule

regulated. To determine whether your company is regulated by this action, you should carefully examine the applicability criteria in sections 92.1, 92.801, 92.901 and 92.1001 of the regulatory text in this document, as well as 40 CFR 85.1601 and 89.1. If you have questions regarding the applicability of this regulation to a particular entity, consult the person listed in the preceding FOR FURTHER INFORMATION CONTACT section.

III. Statutory Authority

Authority for the actions promulgated in this document is granted to the Environmental Protection Agency (EPA) by sections 114, 203, 204, 205, 206, 207, 208, 209, 213, 215, 216 and 301(a) of the Clean Air Act as amended in 1990 (CAA or "the Act") (42 U.S.C. 7414, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550 and 7601(a)).

EPA is promulgating emission standards for new locomotives and new engines used in locomotives pursuant to its authority under section 213 of the Clean Air Act. Section 213(a)(5) directs EPA to adopt emissions standards for "new locomotives and new engines used in locomotives that achieve the greatest degree of emissions reductions achievable through the use of technology that the Administrator determines will be available for such vehicles and engines, taking into account the cost of applying such technology within the available time period, and noise, energy, and safety factors associated with the application of such technology." As described in this document and in the regulatory support document, EPA has evaluated the available information to determine the technology that will be available for locomotives and engines proposed to be subject to EPA standards.

EPA is also acting under its authority to implement and enforce the locomotive emission standards. Section 213(d) provides that the standards EPA adopts for new locomotives and new engines used in locomotives "shall be subject to sections 206, 207, 208, and 209" of the Clean Air Act, with such modifications that the Administrator deems appropriate to the regulations implementing these sections. In addition, the locomotive standards "shall be enforced in the same manner as [motor vehicle] standards prescribed under section 202" of the Act. Section 213(d) also grants EPA authority to promulgate or revise regulations as necessary to determine compliance with, and enforce, standards adopted under section 213. Pursuant to this authority, EPA is requiring that manufacturers (including

remanufacturers) of new locomotives and new engines used in locomotives must obtain a certificate of conformity with EPA's emissions standards and requirements, and must subject the locomotives and engines to assembly line and in-use testing. The language of section 213(d) directs EPA to generally enforce the locomotive emissions standards in the same manner as it enforces motor vehicle emissions standards. Pursuant to this authority, EPA is promulgating regulations similar to those adopted for motor vehicles and engines under section 203 of the Act, which prescribes certain enforcement-related prohibitions, including a prohibition against introducing a new vehicle or engine that is not covered by a valid certificate of conformity into commerce, a prohibition against tampering, and a prohibition on importing a vehicle or engine into the United States without a valid, applicable certificate of conformity. In addition, EPA is promulgating emission defect regulations that require manufacturers to report to EPA emissions-related defects that affect a given class or category of locomotives or locomotive engines.

EPA is also promulgating regulations to clarify the scope of the Act's preemption of state regulation. Section 209(e) prohibits states from adopting and enforcing standards and other requirements relating to the control of emissions from new locomotives and new engines used in locomotives. This provision also grants EPA authority to adopt regulations to implement section 209(e). Pursuant to this authority, EPA is promulgating regulations to implement the express preemption of state emissions standards for new locomotives and new engines used in locomotives, for the purpose of clarifying the scope of preemption for states and industry.¹

¹EPA, the State of California and the Class I freight railroads operating in Southern California have been developing a unique, voluntary railroad fleet average program to achieve additional NOx reductions for the South Coast ozone nonattainment area. The program would be implemented principally by the railroads and the California Air Resources Board. The parties are structuring this agreement to achieve their mutual goals, including successful implementation of the unique consultative process in the EPA's approval of the 1994 California state implementation plan (SIP) revisions for the South Coast. In particular, the agreed fleet average program will achieve reductions that meet the targets of measure M-14 included in the 1994 California SIP revisions approved by EPA in 1996. In the event that the agreement fails to attain its identified emission reductions, and is terminated as provided by the agreement, EPA has reserved and will exercise its authorities to assure emission reductions from railroads and/or, if necessary, from other national transportation sources.

IV. Description of Action

This section contains a description of each provision of today's rule. This rule contains emission standards not only for locomotives originally manufactured after the effective date of the standards, but also for existing locomotives originally manufactured after 1972, when remanufactured after the applicable effective date of today's action. Today EPA is adopting the first national emission regulations applicable to locomotives. In addition to emission standards, this rule contains a variety of compliance and enforcement provisions, as well as regulations concerning the preemption of certain state and local controls over locomotives. Each of these items is discussed in detail in this section and in the Summary and Analysis of Comments document (SAC) accompanying this rule. For complete information on the new program requirements the reader is referred to the accompanying regulations appearing at the end of today's document. The reader is also referred to the complete Title 40, parts 85 and 89 of the Code of Federal Regulations, which this rulemaking amends.²

²The regulations published at the end of this document do not include a paragraph that was inadvertently included in the regulations signed by the Administrator on December 17, 1997 and released to the public electronically on December 18, 1997. The final rule, as signed by the Administrator and released electronically, contained a regulatory provision that was included in a staff-level draft, but was intended to be deleted from the final version prior to signature. However, due to a mistake, EPA staff inadvertently failed to delete this particular provision prior to signature. In this action, the Administrator removed the following paragraph from the final locomotive emissions regulations:

"(2) Where the manufacturer or remanufacturer identifies the reason(s) that the failing locomotives failed to comply with the applicable emission standards, and demonstrates, to the Administrator's satisfaction, that such reason(s) was (were) beyond the control of the manufacturer or remanufacturer (or its suppliers, or other entities contracted by the manufacturer or remanufacturer to provide goods or services for the manufacture or remanufacture of the locomotive), EPA will not pursue remedial action against the manufacturer or remanufacturer."

To the extent that the rule signed on December 17, 1997 may be deemed to have been promulgated, EPA finds good cause for removing this paragraph without prior notice and comment, since such procedure is unnecessary, and contrary to the public interest. Public notice and comment is unnecessary because EPA is simply removing from the regulatory text a paragraph that the Agency did not intend to include in the final locomotive regulations. Moreover, public notice and comment in this instance is contrary to the public interest because it would delay publication and effectiveness of these emission standards, which would result in delaying the emission benefits that will be achieved through implementation of these standards.