

Maritime Goods Movement Coalition

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By Electronic Mail

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Alan C. Lloyd, Ph.D., Secretary
California Environmental Protection Agency
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Re: Comments on the Air Resources Board Draft Emissions Reduction Plan

Dear Secretaries McPeak and Lloyd:

On behalf of the Maritime Goods Movement Coalition, we submit the following comments regarding the Draft Emission Reduction Plan for Ports and International Goods Movement (ERP).

The Maritime Goods Movement (MGM) Coalition is a coalition of stakeholders in the maritime goods movement sector who have joined together to develop a long-term, comprehensive goods movement plan that will allow the region to attain national air quality standards and address local public health concerns while still protecting the region's economy and ensuring continued economic growth. Current members include representatives of the ports, terminal operators and fuel and energy providers.

Our comments address specifically the potential air quality, public health and economic benefits of using the integrated strategy contained in Appendix C of the ERP (the Maritime Goods Movement, or MGM, Coalition proposal). We also wish to respond to recently-submitted comments and questions contained in a February 22, 2006 letter from a coalition of environmental and community groups. While the commenters refer to the MGM Coalition proposal as an emissions trading program, in fact it is more of a hybrid emissions reduction and trading program that contains several different elements, including risk-based health standards, declining emission rates, emissions trading and emission fees. It is designed to meet the specific legal, environmental and public health needs of regulating the goods movement sector. The program's emission and risk reduction elements constitute the heart of the proposal and emissions trading elements are carefully restricted to those conditions under which they would

add significant environmental, public health and economic value without jeopardizing air quality or public health benefits.

Benefits of the Maritime Goods Movement Coalition Proposal

1. Reference Point

The benefits of the MGM Coalition proposal perhaps can best be appreciated by stating first the general contours of current regulatory approaches. These are taking shape in different ways and pending legislation may add new programs or alter existing approaches. In general, there are two types of approaches to regulating engine emissions from the goods movement sector. One is the promulgation of emissions standards by one or more of the state's air quality agencies. Under current law, that authority rests with the Air Resources Board, which already has adopted standards applicable to cargo handling equipment, auxiliary engines on ships and a variety of other engine types. Local and regional air districts, most notably the South Coast Air Quality Management District, have announced that they also may seek to regulate emissions from the sector, perhaps as a backstop to action by others. In addition to efforts by the air quality agencies, the ports have begun to exercise their leasing authority as a means of requiring tenants to implement lower-emitting technologies and practices at their terminals.

There are fairly significant limits and potential shortfalls associated with these current approaches. In the first place, there is a very material risk that none of these approaches can quickly and effectively address main engine (and perhaps other significant) emissions from ocean-going vessels due to a lack of legal authority to regulate those vessels directly. The Air Resources Board's authority may be significantly limited by the federal Clean Air Act and the Constitution. There are a variety of other potential legal hurdles involved with the current piecemeal approach, such as the question of the extent to which the local and regional air quality management districts can indirectly regulate engines, but suffice it to say that the legal hurdles to comprehensive regulation of this sector are anything but small.¹

For a significant part of the emissions inventory the current approaches will almost certainly suffer from significant time delay. Delays in the ports' ability to use their leasing power is almost inevitable because it will take time for each port to negotiate individual lease terms with each tenant – both time to wait for a triggering event (e.g., the need for a lease negotiation) and the time required to negotiate the terms of each lease. Sources will have a significant incentive both to delay the need for a lease modification and to delay undertaking any emissions-reducing investments until after their lease is modified.

These and other potential legal and practical impediments led our coalition to consider alternative ways in which the ports, air quality agencies and other interested public and private

¹ Of course, piecemeal approaches can also have serious unintended economic and even environmental consequences. For example, individual lease or regulatory requirements for specific technologies or fuels (e.g., cold ironing, LNG, etc.) could prompt shippers or carriers to alter their business relationship with a port so as to avoid the requirement altogether (e.g., by shifting business to another port). Or such requirements may cause an entity to defer or cancel emission-reducing investments in other technologies or fuels.

stakeholders might collaborate to address goods movement-related emissions promptly and effectively by a new and different approach.

2. Brief Description of the MGM Coalition Approach

While there is no absolutely certain way to remove the types of risks described above, we believe there is a very significant potential for addressing all of the goods movement sector emissions in a comprehensive and integrated manner if the program offers sufficient flexibility, certainty and uniformity to regulated entities while also providing strong assurances that public health and environmental targets will be met. We believe that a program that offers to achieve these multiple objectives should be sufficiently valuable to stakeholders of all (or at least most) perspectives that collaboration toward these common goals can be achieved. Our proposal seeks to achieve these objectives by using a tiered approach to regulation.

The following paragraphs reflect the current status of Coalition discussions and should be regarded as describing preliminary concepts only at this stage. The Coalition anticipates that there will be a full and public discussion of all elements of the proposal and thus recognizes that any final proposal could differ in material respects from what is presented below.

Under the first tier, the program would establish (or, in the case of already-adopted rules, incorporate) performance standards for each emissions category in the goods movement sector. These performance standards would be defined in terms of grams of emissions per unit of output (e.g., per brake horsepower hour or kilowatt hour). The standards would become increasingly stringent over time based on agency determinations regarding cost-effectiveness and technological feasibility and on each basin's need for emission reductions as part of the Clean Air Act attainment or reasonable further progress requirements. With the exception of truck and rail engines, the responsibility at the ports (and potentially at appropriate inland locations) for demonstrating compliance of engines operating at each terminal with the applicable performance standards, calculated on an average emissions basis, would rest with each terminal operator.² Rail engines could be addressed by the program or separately. Truck engines would be addressed under a separate program (see below). Either rail or truck engines could in theory be included in a terminal's emissions compliance umbrella under separate agreements at the election of the rail or truck engine operator or owner and the terminal operator.

The program would require each terminal to conduct an initial, and potentially periodic, health risk assessment to determine the estimated risk associated with the operation of engines under their control. A terminal's eligibility to trade emission reduction credits would depend on whether the terminal's estimated risk fell below an established risk threshold. Under the proposal, terminal operators would always be eligible to **generate and sell** emission reduction credits generated within the terminal because such reductions would represent accelerated progress beyond that required by the performance standards. But no terminal operator would be eligible to **use** credits generated elsewhere until it had first achieved the specified estimated risk level. This benchmark risk level should be established based on further evaluation of the

² Although the responsibility for demonstrating and reporting progress may rest with each terminal, the actual emission reduction responsibility may be assigned to other entities pursuant to private contracts with the owners and operators of different types of engines and vehicles that operate in the ports.

emissions and of exposure in the ports and in other goods movement areas, but should be consistent with that level determined by the U.S. Environmental Protection Agency as providing an ample margin of safety.

The program thus would provide for continuous emissions and risk reduction at each terminal and potentially at each significant point along the goods movement corridor. These requirements would be legally implemented through memoranda of understanding or other contract or lease mechanisms. Terminals would elect to participate in this first tier of the program and become subject to the program's performance standards as a condition of participation in the goods movement market.

The program would include two backstop provisions (i.e., a second and third tier). For those entities that elect to participate in the market, their leases (upon renewal or modification) would incorporate their commitment to meet the applicable performance requirements. For those who do not elect to participate, their leases would, upon renewal or modification, remain subject to individual project evaluation and to the potential imposition of emission reduction and risk-based conditions. As a second backstop, the program would impose an excess emissions fee. Sources that do not elect to participate in the market or participants who fail to meet the established performance standards would be required to pay a fee based on the extent to which the performance standards are not met. The fee would be used to reduce emissions in the sector that might not otherwise be achieved.³

The Coalition is still evaluating possible additional mechanisms for reducing truck engine emissions. Our current thinking is that the program would continue to benefit from the existing public incentives (e.g., through Moyer or Gateway Cities programs) to truck owners to retrofit or replace their truck engine or otherwise to control engine emissions. These incentives could potentially be enhanced with private funds upon adoption of appropriate credit generation protocols. To the extent these incentives proved insufficient to address truck emissions, then a second-phase strategy might be implemented to provide other types of appropriate inducements to encourage truck owners to reduce their engine emissions.

Finally, while the proposed program could be implemented either as part of the regional or state transportation plan or by existing air quality agencies and the ports, the Coalition believes that the preferred path would be to establish a joint powers authority to implement the program, to track emissions- and risk-reduction progress periodically and to ensure that the environmental and public health components of the program are well integrated with the state's infrastructure investments. We anticipate that the program could be initiated now by the ports and the air quality agencies, but that in the next few years a properly-authorized joint powers authority could take over program administration.

Please refer to our previous submittals (contained in Appendix C to the ERP) for additional details regarding the proposal.

³ The fee should be set at a level that would not compete with the private credit market (i.e., a price above the prevailing market price) and that would ensure that sources would not have an incentive to pay the fee on an ongoing basis without reducing emissions.

3. Program Benefits

We believe the MGM Coalition proposal offers a number of significant benefits; specifically that, relative to current regulatory alternatives, it will be:

- ***Faster*** - it will deliver more rapid improvement in air quality and public health because it can plug gaps in legal authority, it can be implemented more quickly than the leasing process would permit and it can accelerate investment in the ports and other goods movement areas;
- ***More Effective*** - it will reduce risk and improve public health by creating strong financial and other incentives to reduce risk at and near local communities;
- ***More Complete*** - it can provide a source of funding to reduce emissions from “orphan” sources (i.e., those sources, e.g., trucks, vessels, for which more traditional means of regulation are not likely to succeed);
- ***Less Vulnerable*** - it can provide a legally-permissible means of addressing emissions from sources that cannot otherwise be regulated by the state;
- ***More Uniform*** - it can provide a uniform structure for regulating goods movement-related emissions across the state, while still permitting differences in regional stringency and permitting terminals and other entities the flexibility they need to function effectively;
- ***Less Costly*** - it can ensure that emission reductions are achieved in the most cost-effective manner, subject to local public health needs, so as to reduce the overall cost of the program and save jobs;
- ***More Equitable*** - it can facilitate a fair allocation of financial responsibility between the public and private sectors; and
- ***More Confident*** - it can increase confidence that the State Implementation Plan (SIP) commitments for the goods movement sector can be met because the program’s measures are not as vulnerable to gaps in legal authority and because the program need not wait for additional legal authority or for lengthy lease negotiations to proceed.

Responses to Comments:

General note: The comments reprinted below are from the February 22, 2006 letter from a coalition of environmental and community groups. Responses are provided to each of the comments regarding the Maritime Goods Movement Coalition proposal.

Comment: The MGM Coalition proposal is an “industry” proposal.

Response: The MGM Coalition proposal was developed initially with support from the Port of Long Beach, a public entity. The Coalition was formed to include other entities that supported the proposal, including fuel and energy providers and marine terminal operators. The Coalition process is open to all interested persons; in fact the Coalition has actively encouraged full participation by regulatory agencies, other ports and non-governmental organizations.

Comment: “User fees provide a reasonable and solid solution to resolving the pollution problem. We believe that the polluter should pay to reduce pollution, and instead, ARB seems to be promoting a program where industry can pay to pollute.”

Response: These two sentences are confusing because they seem to take both sides of the same issue. Why does the commenter favor imposing user fees, but apparently oppose the use of emission fees? If the commenter is saying that a user fee would work to reduce pollution, but that excess emission fees would not, then we disagree. Indeed, an emissions fee would work better than a user fee in many important respects. First, because a user fee is based on containers (or other unit of goods), it does not differentiate between efficient and inefficient movement of cargo. By contrast, an emissions fee rewards those who find the most efficient (i.e., least polluting) means of moving goods. Under an emissions fee program, the payor benefits by paying less if it can move more goods with fewer overall emissions. Second, a user fee may also be more vulnerable to legal challenge, because the nexus for the fee is tied primarily to economic activity. Because an excess emissions fee instead is tied to the degree of pollution or harm, it is more likely to be upheld as a constitutionally permissible exercise of the state’s police power. Finally, while user fees are likely to be used to fund many different types of projects, our proposed excess emissions fee will be applied only to those projects that are demonstrated to reduce emissions.

The MGM Coalition proposal recommends that emissions fees be imposed as a backstop to a source’s requirement to reduce emissions. Under the MGM Coalition proposal, the fee would be used to ensure that sources that cannot otherwise reduce emissions would do so indirectly, because the emissions fee would be used to finance other pollution controls in the port area. For example, “single visit” vessels, for which shore-power related retrofits would not be cost-effective, could pay a fee to finance the development of floating emission controls or otherwise to obtain offsetting emission reductions. The fee would be set at a level higher than the otherwise anticipated cost of reducing emissions at the port to discourage sources that can afford to control their emissions at reasonable cost from simply paying the fee. Because the fee would be set higher than the credit price, the revenues would likely provide more than offsetting

emission reductions. And it would create an ongoing incentive for improved efficiencies and conservation as sources seek to avoid paying the fee.

Comment: "...trading programs, such as the one proposed have serious environmental justice implications. We would not support a trading program for the goods movement sector because of concerns that local communities around goods movement corridors would receive the brunt of emissions impacts from the future dramatic increases in emissions."

Response: While one can envision a trading program that might not address local health impacts, that is not a fair characterization of the MGM Coalition proposal. The MGM Coalition proposal explicitly requires a source to achieve local health targets BEFORE it can purchase and use emission reduction credits in any zone in which there are disproportionate local health impacts. Indeed, the proposal would ACCELERATE investment in highly-impacted local areas because it allows surplus emission reductions to be generated, but not used, in such zones. Thus, the proposal is very likely to outperform any more traditional alternative because it accelerates public health benefits and addresses environmental justice concerns more quickly.

Comment: "... trading programs generally limit or eliminate in whole public participation in environmental decision-making. In fact, the Goods Movement Authority (GMA) proposed by Appendix C would only include industry and governmental agencies, totally leaving out many of the people most affected by goods movement pollution."

Response: This is just plain false. There is no basis for this statement either generally or in specific reference to the MGM Coalition proposal. Any jurisdiction implementing the proposal, either existing entities (e.g., the Air Resources Board, the SCAQMD, or the ports, or a future joint powers authority) would certainly preserve broad public participation. Any compliance options provided by a trading program would be developed by rulemaking, following public notice and significant opportunity for comment. Perhaps the commenters mean to say that a source, and not the public, would have the choice among various compliance options. But all compliance options would be evaluated in advance of their adoption and use. This is similar in character to other compliance flexibility provisions already offered in existing regulations. *See, e.g.,* the alternative compliance options provided in the recently adopted Air Resources Board cargo handling rule. As in the case of other compliance flexibility regulations, the compliance options all would be subject to strict and enforceable protocols, adopted only after public notice and an opportunity to comment.

Comment: "... trading programs, if they ever make sense, only do so where an industry has a long history of regulatory control and environmental responsibility and where future reductions are incremental and may be relatively costly to achieve."

Response: Trading programs make sense where there are large cost differences among various sources to be controlled, where the means are available to monitor and enforce the emissions in the trading market, and when the program is structured so as to ensure it will meet its regulatory objectives (e.g., here, both attainment progress and local health benefits). So long as these conditions exist, there is no inherent reason why a trading program would work better after sources have already been controlled. Consider, for example, the acid rain program, which

was imposed on unregulated power plants, or EPA's program for removing lead from gasoline. Indeed, in the goods movement context, using a program with trading elements makes particular sense because the program's economic benefits will encourage binding participation from the very sources that the state otherwise may not be able fully to regulate by more traditional means.

Of course, the marine sector does have a long history of regulatory control in areas other than air emissions, such as safety control and discharges to water. And significant portions of the sector (e.g., petrochemical) are among the most heavily regulated industries in the world in terms of air emissions. So there is every reason to believe that appropriate monitoring and enforcement mechanisms can be implemented to ensure the effective operation of the program.

Comment: "... a fundamental flaw of this trading program is the fact that it is not confined to a single industry. The program calls for trading between goods movement sources and stationary sources."

Response: The comment suggests that trading between source types would inherently be flawed due to relative uncertainties in monitoring emissions from different source types. In the first place, air quality agencies have a great deal of experience in accommodating uncertainties among source types in their air quality management plans. The air plan for each region includes assumptions about the relative level of economic activity and emissions among various source types, including mobile, area and stationary sources. While there are differences in the confidence levels associated with activity level projections and emission factors among source types, these uncertainties are not unmanageable, nor do they make it inappropriate to use trading mechanisms. Rather, they make it prudent for the agencies to structure the quantification protocols for generating credits so that they err on the side of conservatism whenever they lack sufficient confidence in any monitoring or estimation method. This is something that the air quality agencies have done for many components of their air quality planning, including for emissions trading programs, and it is an exercise they are well prepared for specifically in the goods movement context.

Comment: "We are also concerned about the impacts this trading program would have on the CEQA process."

Response: The commenters may misunderstand the relationship between the MGM Coalition proposal and the CEQA process. Under the MGM Coalition proposal, compliance with the performance standards (i.e., the emission and risk reduction requirements) would constitute mitigation of the project's air quality impacts. That is no poison pill, as oddly characterized by the commenters, it is instead the very achievement of the environmental and public health goals. This treatment is no different at all from the way stationary source impacts are already evaluated under CEQA. When evaluating environmental impacts for any project that would be subject to existing air quality regulations, the lead agency refers to those regulations to determine significance and adequacy of mitigation.

Comment: "We also fear that use of this trading program locks California into a definite course of action. This program does not provide room to change as new ideas and innovative

transportation technology becomes available. In fact it would impede local control of decisions over whether or not to move forward with an expansion proposal.”

Response: In one important but limited respect, the statement is true – the program *would* commit California to reducing emissions from the goods movement sector in a comprehensive and enforceable manner (just as demanded by the commenters in their other remarks). In other respects, however, it is not true. Far from stifling technology innovation, the use of market instruments (both the monetizing of emission reductions and the use of a fee) would create strong continuous incentives for innovation, efficiency and conservation. Sources would search for new, more efficient and lower-emitting ways to do business to generate value and to avoid costs. It is hard to imagine another program design that could provide more of such an incentive. Finally, as to the concern that the program would impede local control over expansion decisions, the likely impact of the program is not as described by the commenter. Because the program is a lawful and enforceable means to reduce emissions from the sector, it will undoubtedly make future expansion more feasible – because it will promptly address the environmental impacts of both existing operations and of any expansion. In this way, it would not impede, but would aid local government decisions (i.e., by providing assurance of mitigation). But it would not fully remove local control. The ports and local governments would still retain the ultimate authority over its leases. But, just as local governments do not set regional or state air quality or risk standards, they would not do so here. The air quality agencies would set the program’s air quality and risk-based performance standards for the goods movement sector, just as provided under current state law.