

California to Discontinue Enforcement of the
Ocean-Going Vessel Auxiliary Diesel Engine Regulation

Date of Notice: May 7, 2008

Note: This revised advisory regarding enforcement of the Ocean-Going Vessel Auxiliary Diesel Engine Regulation supersedes the advisory issued on March 10, 2008.

Notice to Ship Owners or Operators:

This is to inform you that the California Air Resources Board (ARB) will discontinue enforcement of the Ocean-Going Vessel Auxiliary Diesel Engine Regulation (regulation). This action is taken pursuant to an injunction ordered by a federal district court (district court). *Pacific Merchant Shipping Ass'n v. Thomas A. Cackette* (E.D. Cal. Aug. 30, 2007), No. Civ. S-06-2791-WBS-KJM. The ARB filed an appeal with the U.S. Ninth Circuit Court of Appeals (Ninth Circuit) of the district court's decision and requested a stay of the injunction pending the appeal. This stay was granted on October 23, 2007. *Pacific Merchant Shipping Ass'n v. Thomas A. Cackette*, No. 07-16695 (9th Cir. Oct. 23, 2007). On February 27, 2008, a three-judge panel of the Ninth Circuit issued a ruling holding that the regulation, as drafted, was preempted under the Clean Air Act (CAA) section 209(e). *Pacific Merchant Shipping Ass'n v. James Goldstene*, No. 07-16695 (9th Cir. Feb. 27, 2008). The Ninth Circuit did not grant ARB's petition for a rehearing of the panel decision. It should be noted that the district court's opinion made it clear that the injunction may be dissolved upon ARB's receipt of authorization to enforce the regulation from the U.S. Environmental Protection Agency (U.S.EPA) pursuant to CAA § 209(e).

ARB does not intend to withdraw the regulation at this time from the California Code of Regulations. Instead, ARB plans to submit a request for authorization from U.S.EPA, pursuant to CAA § 209(e), to enforce the existing regulation. While that regulation is submitted for authorization and being reviewed by U.S.EPA, ARB will also develop a new regulation for ship auxiliary engines that will address the issues raised in *PMSA*. ARB staff plans to propose this new regulation to the Board in July of this year. In the meantime, ARB encourages ship operators to use 0.5% sulfur marine distillate oil (MDO) or marine gas oil (MGO) within 24 nautical miles of California to reduce the significant adverse health impacts from human exposure to the air pollutants emitted by ocean-going vessels in California waters.

If you have any questions about this notice, please contact Mr. Paul Milkey, Staff Air Pollution Specialist at (916) 327-2957 or pmilkey@arb.ca.gov, or Ms. Peggy Taricco, Manager at (916) 323-4882 or ptaricco@arb.ca.gov.