

CARB/Railroad Statewide 2005 Memorandum of Understanding

SCAQMD Comments

CARB Workshop
August 10, 2005

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Key Issues With MOU

- Lack of full public participation
- Does not fully address locomotive and railyard emissions, and
- Termination clause impedes state and local efforts to achieve additional air quality and public health benefits

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Highest Priority

- Remove “Poison Pill” — eliminate the termination clause
- Support state and local efforts to achieve additional air quality benefits

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Termination Clause

“...Participating Railroads shall perform all obligations set forth in the Program Elements of this Agreement, unless (i) an agency or political subdivision of California adopts or attempts to enforce any requirement addressing the goal of any Program Element . . . or (ii) U.S. EPA adopts or attempts to enforce more stringent requirements addressing the goal of any Program Element...”

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Stated Goals of Program Elements

- *Idling.* “eliminate non-essential locomotive idling”
- *Fuel Sulfur.* achieve use of “lower sulfur . . . fuel”
- *Visible Emissions.* “ensure that incidence of locomotives with excessive visible emissions is very low . . .”
- *Railyard Emissions Impacts.* “expedite . . . actions (to reduce the impact of air emissions from railyards) . . .”
- *Health Risk Assessment.* “identify the risk from toxic air contaminants that these rail yards represent . . .”
- *Mitigation Measures.* “evaluation and implementation of feasible mitigation measures . . .”

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CARB Letter

- *“The 2005 MOU leaves intact all authority and discretion that existed prior to its enactment. The South Coast AQMD may proceed with its railroad measures if it so chooses. . . .”*

- Letter from CARB Executive Officer to SCAQMD Governing Board, June 29, 2005

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How the Railroads Use the 1998 CARB MOU Termination Clause

- *“Since the adoption of this package in regulatory form could result in the termination of the 1998 ARB MOU . . . the (District’s EIR) analysis must include the environmental impacts resulting from the termination and all cumulative impacts from the termination.”*

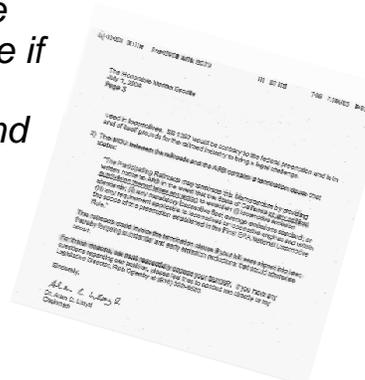
■ Rail Comments on Proposed SCAQMD Reg.35 Rules.

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CARB Letter to Sen. Martha Escutia in Opposition to SB1397

“The railroads could invoke the (1998 MOU) termination clause if your bill were signed into law; thereby forgoing substantial and early emission reductions that would otherwise occur.”

“For these reasons we must respectfully oppose your SB 1397 . . .”



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Legal Authority

- Virtually all MOU provisions could have been adopted by regulation — *without the termination clause*
- Can state & local governments do more than the MOU? Yes . . .

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Potentially Affected Actions

- Visible emission enforcement
- Port of Los Angeles *No Net Increase*
 - Municipal Proprietor & Market Participant exceptions to preemption
- Legislative Proposals: e.g. SB 764 (Lowenthal)
- SCAQMD Proposed Regulation 35 – Idling and Risk Assessment/Reduction
- Idling-related nuisance

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MOU Program Elements: Specific Concerns

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Visible Emissions Enforcement

- Past AQMD Enforcement Settlements
 - more stringent visible emissions limits
 - more comprehensive detection requirements
 - more expeditious repair time limits
 - higher penalties for violations
- *Recommendation:* Amend MOU consistent with past SCAQMD enforcement settlements



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Idling

- Anti-idling devices on *intrastate* locomotives —
 - minority of emissions
 - devices save railroads money
- Idling limited to 60 minutes, but exemptions are broad
- *Recommendations:*
 - anti-idling devices on line haul
 - tailor exemptions



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Low Sulfur Diesel Fuel

- “*Maximize*” use of low sulfur diesel fuel; no criteria
- 80% of fuel supplied in California must be low sulfur, but no requirement to supply any amount in state
- MOU allows use of USEPA Diesel Fuel, unlike CARB’s rule for intrastate locomotives (higher aromatics)
- *Recommendations:*
 - establish criteria to maximize fueling of inbound locomotives with CARB diesel
 - require CARB on-road fuel

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Health Risk Assessment

- Emissions inventory in 21 to 33+ months; no deadline for HRA
 - SCAQMD proposed rule: HRA in 12 mo.
- No requirement or timeframe to reduce risks
 - CARB & railroads create process to determine additional actions to communicate and mitigate risks
- *Recommendations:*
 - specify risk level triggering development and implementation of risk reduction measures
 - specify implementation deadlines



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Mitigation Measures



- CARB & railroads “meet & confer” to finalize plan to implement feasible mitigation measures & to evaluate longer-term measures
- No requirement to —
 - implement any particular control measures
 - achieve acceptable health risk
- *Recommendations:*
 - require *implementation* of all feasible measures, e.g. truck engine & hybrid switchers, LNG, accelerated replacement, anti-idling devices for line haul, low sulfur fuels, retrofit of yard equipment
 - support mitigation fee as alternative (SB 459)
 - demonstrate aftertreatment on line hauls

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Enforcement Issues

- Key language needs clarification to ensure enforceability
- Many opportunities for rail to contest violations
- No injunctions

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Conclusions & Recommendations

- MOU's weaknesses outweigh benefits
- Recommendations:
 - Rescind MOU; alternatively, seek amendments to more effectively control emissions
 - Most importantly —
 - eliminate termination clause, and
 - support state and local actions to achieve additional air quality benefits

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Enforcement Issues

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Enforcement Issues

- Visible Emission Reduction Requirements and Penalties
 - Requirements Compared
 - Penalties for Visible Emissions
 - Penalties for Failure to Repair
- Penalties for Program-Wide Failures
- Idling Reduction Requirements and Penalties
- Enforcement Deficiencies in MOU

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Visible Emissions Enforcement Requirements Compared

■ Inspections

- AQMD: Mandatory Minimum weekly & monthly inspections and random audit inspections (at least 35 units) — 120 total
- MOU: Annual inspection of each unit (possibly more frequent?)

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■ Opacity Meters

- AQMD: Opacity meter must be used for work tests and smoke inspections of at least 90% of units authorized to operate in District @ 12 month maintenance

- MOU: Optional

■ Reporting

- AQMD: Monthly
- MOU: Annually

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Visible Emissions Enforcement Penalties for Visible Emissions

CARB MOU

- No specifically applicable penalties
- Possible penalties only if visible emission violations “substantially impair the goals of the MOU”

AQMD Settlements

- \$2,000 > 1 Ringlemann < 2 Ringlemann
- \$4,000 > 2 Ringlemann < 3 Ringlemann
- \$6,000 > 3 Ringlemann

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BURLINGTON NORTHERN & SANTA FE RY CO
FOR MISCELLANEOUS EXPENSE

30048425 NUMBER

SEATTLE, WA LOCATION DATE 1-31-05

AMOUNT \$6,000.00

SIX THOUSAND AND 00/100

SOUTH COAST AIR QUALITY MGMT. DIST.
21865 COPLEY DRIVE
DIAMOND BAR, CA 91765-4178

Jean M. Rose AUTHORIZED SIGNATURE

PAY TO THE ORDER OF

PAIABLE THROUGH JPMorgan Chase Bank

- 3 NOVs
- \$2,000/NOV
- Total \$6,000

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SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT
21965 E. COPLEY - DIAMOND BAR, CA 91765-4182

NOTICE OF VIOLATION DATE OF VIOLATION 8/27/04

Union Pacific Railroad

NAME 1416 Dodge Street, Room 900 Omaha NE 68179 CITY Omaha NE 68179

MAILING ADDRESS U.P. Trucks south of Railroad Ave. west of Verhove Ave CITY 3337

LOCATION ADDRESS OF VIOLATION ID # 402-544-3000

CITY Palm Springs SA 402-544-3000 TELEPHONE #

SECTOR

YOU ARE HEREBY NOTIFIED THAT A VIOLATION OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 41701(a)

AND/OR SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT DUE IS:

Do railroads get the option to walk away from the visible emission requirements of the MOU when issued tickets now or in the future, anywhere in the State by a local district?

BY Brett Kimberly TELEPHONE 909, 396-2510

INSPECTOR So. Mgr. of Locomotive

SERVED TO Kent Denkers TITLE Engin. + Maint.

SERVED BY Brett Kimberly DATE 9, 2, 04

VIA CERTIFIED MAIL

No. P 41427 OFFICE OF STATIONARY SOURCE COMPLIANCE

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Visible Emissions Enforcement Penalties for Failure to Repair

- Repair time limit
 - MOU: Within four days
 - SCAQMD: Within 10 -18 hours
- Penalties for failure to repair
 - MOU: \$400 to \$1,200
 - SCAQMD: \$5,000



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Visible Emissions Enforcement Failure to Meet Program Requirements

CARB MOU



AQMD

Stipulated Penalty Schedule

Area	Measure	Section	Performance Standard	Penalty
Monthly Reports	Fail to submit within time allowed Materially incomplete	Sec. 701 Sec. 701	each occurrence	\$2,000 \$3,000
FAX Notice	Fail to provide FAX notification	Sec. 406, 411, 504	each occurrence	\$250
Certification Training	Fail to certify required personnel ** Fail to monitor/governor who failed recertification training	Sec. 607, 602 Sec. 603	each occurrence	\$2,000 \$2,500
Plant Training	Fail to conduct maintenance plant trainings	Sec. 607	each occurrence	\$2,500
Random Insp.	Fail to perform minimum monthly random inspections	Sec. 423, 424	each occurrence	\$5,000
Field Insp.	Fail to perform minimum monthly field inspections	Sec. 402, 403	each occurrence	\$5,000
MT2 Inspections	Fail to perform qualifying opacity inspection (visual or meter assisted)	Sec. 414	each occurrence	\$4,000
Remove Service****	Fail to remove unit from service in SCAB Fail to require unit before re-entering SCAB	Sec. 801, 802 Sec. 801, 802	each occurrence	\$5,000 \$5,000
Future NOV's During OPE	Locomotive smoking: Greater than or equal to 1.0 and less than 2.0 Ringelmann Greater than or equal to 2.0 and less than 3.0 Ringelmann Greater than or equal to 3.0		each occurrence	\$2,000 \$4,000 \$6,000
Future NOV's During OPE Self-consult	NOV's During OPE (Self-consult) equal to or less than OPE as prescribed by section 101****		each occurrence	\$1,000

** If an individual reveals test fails the verification training this is not subject to the penalty schedule. In such a case, however, it applies as to performance only.

*** Penalties for NOV's exceed during the OPE that exceed the OPE permit threshold located to section 101 and assessed at the normal NOV penalty levels.

**** Note: A unit may be subject to both a NOV and penalty payment to section 2.2 of the Settlement Agreement as well as a penalty payment to the District of Southern Orange County if a violation of section 801 or 802 occurs to the disposition of the same locomotive.

** MT2 opacity inspections are conducted on 100 or more of locomotives subject to the MT2 equipment under Section 414 to avoid the penalty.

Idling Reduction Requirements and Penalties

BEFORE THE HEARING BOARD OF THE
SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

In the Matter of)
SOUTH COAST AIR QUALITY) Case No. 4979
MANAGEMENT DISTRICT)
vs.)
UNION PACIFIC RAILROAD)
COMPANY)
Respondent.)

FINDINGS AND DECISION OF THE HEARING BOARD

This petition for modification of an Order for Abatement was heard on August 12 and 27 and September 1, 1998 pursuant to notice and in accordance with the provisions of California Health and Safety Code Section 40623 and District Rule 812. The following members of the Hearing Board were present: Edward Camarena, Chair; Laurine Tuleja, Vice-Chair; Dr. Joseph D. Auerbach; Marcus Lewis; and Terry Dipple. Petitioner, Executive Officer, was represented by Nancy S. Feldman, Senior Deputy District Prosecutor. Respondent, Union Pacific Railroad Company was represented by Steven J. Oppenheimer and Andrea Sheridan Ordín, with the law firm of Morgan, Lewis & Bockius, LLP. The public was given the opportunity to testify. The matter was submitted and evidence received. After considering all the evidence and evaluating the credibility of the witnesses, the Hearing Board finds and decides as follows:

SETTLEMENT AGREEMENT ORIGINAL

This Settlement Agreement ("Agreement") is made by and between the SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT ("District") and UNION PACIFIC RAILROAD COMPANY ("Union Pacific").

WHEREAS, the District and Union Pacific desire a compromise settlement and mutual release in which the above-mentioned parties extinguish their mutual rights and claims arising from their disputes and differences as to the rights, duties, and obligations each has arising from the alleged violations of District rules and state health and safety laws as set forth in the Notices of Violation designated and referenced on Exhibit A hereto (the "NOV's"),

\$500,000

2. UP shall dismiss without prejudice its legal action styled *Union Pacific Railroad Company v. South Coast Air Quality Management District, et al.*, LASC Case No. BS053764 ("Action"). Notwithstanding paragraph 4 below, the parties agree that Union Pacific reserves the right to refile and reinstates said legal action or file a new legal action re-alleging facts in that Action should the District Hearing Board hereafter issue any new or modified order for abatement closing or restricting in any fashion the use of UP's rail trackage including but not limited to the trackage in the County of San Bernardino commonly known as "Sliver Siding."

3. Union Pacific and the District agree that any and all prior agreements obligating Union Pacific to temporarily limit or otherwise restrict locomotive idling at Sliver Siding.

Slover Siding Public Nuisance

- Numerous Complainants
- 58 Notices of Violations
- \$500,000 Civil Penalty
- New requirements imposed by AQMD Hearing Board:
 - Use of siding restricted to “emergency use” and engines must shut down immediately
 - Engines may be restarted only to perform mandated safety tests
 - Railroad must keep records
 - Railroad must implement abatement measures and submit monthly progress reports prior to reuse of the siding

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Enforcement Issues

- CARB must provide “reasonable opportunity to remedy” alleged violation
- Penalties for some violations may result only if “failure substantially impairs the goals” of MOU
- Penalties waived “in the event that unforeseen or uncontrollable circumstances” prevent compliance
- No injunctions
- Appeals Board partially appointed by rail considers disputes

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Conclusions

- Numerous deficiencies in current language
- Substantial revisions necessary, at a minimum
- Undercuts existing enforcement programs

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