

California Environmental Protection Agency

 **Air Resources Board**

Final Statement of Reasons for Rulemaking
Including Summary of Comments and Agency Responses

**PUBLIC HEARING TO CONSIDER ADOPTION OF THE
AIRBORNE TOXIC CONTROL MEASURE FOR CRUISE SHIP
ONBOARD INCINERATION**

Public Hearing Date: November 17, 2005
Agenda Item No.: 05-11-02

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State of California
Environmental Protection Agency
AIR RESOURCES BOARD

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I. GENERAL

In this rulemaking, the Air Resources Board (ARB or Board) is adopting an Airborne Toxic Control Measure (ATCM) for cruise ship onboard incineration. The ATCM includes the following primary elements:

- Prohibits onboard incineration within three nautical miles of the California coast;
- Requires cruise ship owners or operators to maintain specified records; and
- Incorporates by reference, the National Oceanic and Atmospheric Administration (NOAA) Nautical Charts.

The rulemaking was initiated by the September 30, 2005, publication of a notice for a November 17, 2005, public hearing to consider the proposed ATCM. A Staff Report: Initial Statement of Reasons (Staff Report) was also made available for public review and comment starting September 30, 2005. The Staff Report, which is incorporated by reference herein, describes the rationale for the proposal. The text of the proposed title 17, California Code of Regulations (CCR) section 93119 was included as an Appendix to the Staff Report. These documents were also posted on the ARB's website for the rulemaking at <http://www.arb.ca.gov/regact/csoi/csoi.htm>.

This Final Statement of Reasons (FSOR) provides an update of the Staff Report.

A. Description of Board Action

On November 17, 2005, ARB conducted a public hearing to consider adoption of the ATCM for Cruise Ship Onboard Incineration. At the hearing, the Board considered and unanimously approved Resolution 05-56 adopting this ATCM into the CCR, title 17, section 93119.

Written and oral comments were received on the proposed regulation from September 30, 2005, to November 17, 2005, and at the public hearing. This Final Statement of

Reasons (FSOR) summarizes the written and oral comments received. ARB's responses to those comments are also set forth in Section II of this FSOR.

B. Modifications to the Original Proposal

There were no modifications to the original proposal. The Board adopted the ATCM as proposed.

C. Incorporation by Reference in the Regulation

The ATCM adopts the following NOAA Nautical Charts: Chart Number 18600 - *Trinidad Head to Cape Blanco* [January 2002], Chart Number 18620 - *Point Arena to Trinidad Head* [June 2002]), Chart Number 18640 - *San Francisco to Point Arena* [July 2000], Chart Number 18680 - *Point Sur to San Francisco* [March 2001], Chart Number 18700 - *Point Conception to Point Sur* [July 2003], Chart Number 18720 - *Point Dume to Purisima Point* [January 2005], and Chart Number 18740 - *San Diego to Santa Rosa Island* [August 2003]), which are incorporated by reference in title 17, CCR section 93119(d)(10).

The NOAA nautical charts are incorporated by reference because it would be impractical to print them in the CCR. Existing ARB administrative practice is to have certain documents incorporated by reference rather than printed in the CCR where the documents are highly technical and complex. The NOAA nautical charts are the standard for confirming whether a cruise ship is within the three nautical mile limit and have a very limited audience. The Three Nautical Mile Line on each chart is precisely depicted thereon. Reproduction of these charts in the CCR reduces that level of precision and therefore imposes a risk on the regulated community since the charts are used for enforcement purposes. The NOAA nautical charts are extensive and it would be both cumbersome and expensive to print these over-sized, technically complex charts with a limited audience in the CCR. Each of the incorporated NOAA nautical charts is identified by date in the ATCM. The NOAA nautical charts, which are incorporated by reference in the proposed ATCM, are and have been available through NOAA's website at <http://chartmaker.ncd.noaa.gov/staff/charts.htm>.

D. Fiscal Impacts to School Districts and Local Agencies

The Board has determined that the adoption of this ATCM will not create costs or savings, as defined in Government Code section 11346.5(a)(6), to any state agency or in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to part 7 (commencing with section 17500), Division 4, title 2 of the Government Code, or other nondiscretionary costs or savings to state or local agencies. In order to maintain statewide consistency with respect to foreign-flagged vessels (including cruise ships), the ARB will serve as the primary enforcement agency for this ATCM. Accordingly, adoption of this ATCM will neither create a mandate upon nor impose costs to local agencies (e.g., the local air pollution control and air quality management districts).

The Executive Officer has determined that this regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that this ATCM will not affect the creation or elimination of jobs within the State of California, the creation of new businesses and the elimination of existing businesses within the State of California, and the expansion of businesses currently doing business within the State of California.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Board has found that the reporting requirements in the regulations that apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

E. Consideration of Alternatives

Alternatives to this regulatory action were considered in the Staff Report, in accordance with Government Code section 11346.2. The Board has determined that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the regulatory action was proposed or would be as effective and less burdensome to affected private persons than the action taken by the Board.

F. Correction of Typographical Errors Made in the Staff Report

Two typographical errors were made in the list of references in the Staff Report. For the purposes of clarity, ARB staff would like to make the following corrections:

- In Appendix F, the reference for “ARB, 1994” is incorrectly stated as June 1994. The correct date is “July 1994”; and
- In Appendix H, the reference for “ARB, 2005b” is incorrectly stated as September 2003. The correct date is “August 2005”.

II. SUMMARY OF COMMENTS AND AGENCY RESPONSES

The Board received written and oral comments during the 45-day public comment period provided for the proposed ATCM and at the November 17, 2005, public hearing. A list of commenters is set forth below, identifying the date and form of all comments that were timely submitted. Following the list is a summary of each objection or recommendation made regarding the proposed action, together with an explanation of how the proposed action has been changed to accommodate the objection or recommendation, or the reasons for making no change.

A. Comments Received During the 45-day Public Comment Period and Board Hearing

<u>Abbreviation</u>	<u>Commenter</u>
BAAQMD	Juan Ortellado, Air Quality Planning Manager Bay Area Air Quality Management District Oral Testimony: November 17, 2005
BACATF	Linda Weiner Bay Area Clean Air Task Force Written Testimony: November 16, 2005
BWN	Teri Shore, Clean Vessels Campaign Director Bluewater Network Written Testimony: November 8, 2005 Oral Testimony: November 17, 2005
ICCL	J. Michael Crye, President International Council of Cruise Lines Written Testimony: November 8, 2005
NRDC	Adriano Martinez, Project Attorney Natural Resources Defense Council Written Testimony: November 11, 2005
SCAQMD	Chung Liu, Deputy Executive Officer South Coast Air Quality Management District Oral Testimony: November 17, 2005
UCS	Don Anair, Vehicles Engineer Union of Concerned Scientists Written testimony: November 10, 2005

1. Comment: ICCL has concerns with the practical application of the definition for the phrase “within three miles of the California coast.” ICCL believes there could be confusion between the NOAA charts identified in the regulation and the standard navigational charts used onboard ICCL’s member vessels. ICCL prefers either not referencing any chart in the ATCM or allowing the use of other navigational charts. (ICCL)

Agency Response: Use of other means to define or delineate the three nautical mile limit, for purposes of enforcing this ATCM, was considered. However, the use of NOAA nautical charts is supported by law, practicality, and consistency.

On March 24, 1961, the United States ratified the Convention on the Territorial Sea and the Contiguous Zone, and on September 10, 1964, the Convention went into force. The Convention provides that “[e]xcept where otherwise provided in these articles, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coast State.” In the context of this international convention as it applies to the United States, charts of the “coast State” refers to the charts of the United States.

The U.S. Supreme Court recognized the charts prepared by the United States Coast and Geodetic Survey as the official United States coastal charts (*United States v. State of California* (1965) 381 U.S. 139, 176). The United States Coast and Geodetic Survey became the National Ocean Survey in 1970, and in 1982, was renamed the National Ocean Service under the National Oceanic and Atmospheric Administration (NOAA). Within the National Ocean Service, the Office of Coast Survey is responsible for preparing navigational products that are required for the safe and efficient maritime commerce in and out of our Nation's ports.

It would not be practical for ARB inspectors to be required to use and maintain each cruise ship's navigational charts. In addition, while each cruise ship's navigational charts may be updated at different frequencies, reliance on one single source's charts (i.e., NOAA) provides for consistent enforcement from cruise ship to cruise ship. Many cruise lines currently use the NOAA nautical charts. For cruise ship owners or operators currently using navigational charts other than NOAA, a set of NOAA charts can be purchased for approximately \$100. Cruise ship owners or operators may, at their discretion, plot the Three Nautical Mile Line shown on the NOAA charts onto different navigational charts.

2. Comment: Several commenters expressed their support for the ATCM and commented that the ATCM will protect public health for port workers and port communities by reducing air toxics including dioxins, furans, and toxic metals emitted during onboard incineration by cruise ships. (UCS, BWN, NRDC, BACATF)

Agency Response: ARB staff agrees with this comment. No response is required.

3. Comment: The enforcement provisions in the ATCM will ensure the effectiveness of the cruise ship incineration ban. (BACATF, BWN)

Agency Response: ARB staff agrees with this comment. No response is required.

4. Comment: Several commenters expressed support for the recordkeeping provisions and using the standardized NOAA nautical charts. (SCAQMD, BWN, BACATF)

Agency Response: No response is required.

5. Comment: BAAQMD thinks that the ATCM does an excellent job of ensuring that potential benefits of AB 471 will become actual emission reductions. (BAAQMD)

Agency Response: ARB staff agrees with this comment. No response is required.

6. Comment: Several commenters noted the historical and projected increase in the number of port calls by cruise ships in California. (NRDC, UCS, BWN, BAAQMD)

Agency Response: No response is required.

7. Comment: Two commenters expressed concern that many coastal communities, especially those near ports, already suffer from the impact of numerous sources of pollution, including diesel emissions from ships, trucks, cargo handling equipment, and locomotives. (NRDC, UCS)

Agency Response: ARB staff agrees with this comment. No response is required.

8. Comment: Prior to AB 471, there were no existing state or federal laws controlling shipboard incineration emissions, and international shipboard incineration standards that went into effect in May 2005 do not adequately protect state air quality. (BWN)

Agency Response: ARB staff agrees with this comment. No response is required.

9. Comment: One commenter noted that the ATCM is feasible and consistent with AB 471. (ICCL)

Agency Response: ARB staff agrees with this comment. No response is required.