

State of California
AIR RESOURCES BOARD

EXECUTIVE ORDER R-11-010

Adoption of Amendments to the Regulation for In-Use On-Road Heavy-Duty Diesel-Fueled Drayage Trucks at Ports and Intermodal Rail Yard Facilities

WHEREAS, on December 17, 2010, the Air Resources Board (Board or ARB) conducted public hearing after issuance of a Notice of Public Hearing (45-Day Notice) to consider the adoption of amendments to the "Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants from In-Use Heavy-Duty Diesel-Fueled Vehicles (Truck and Bus regulation), title 13, California Code of Regulations (Cal. Code Regs.), section 2025; the Heavy-Duty Vehicle Greenhouse Gas (GHG) Emission Reduction Measure (Tractor-Trailer GHG regulation), title 17, Cal. Code Regs., sections 95301 to 95307, 95309, and 95311; and the regulation for In-Use On-Road Heavy-Duty Diesel-Fueled Drayage Trucks at Ports and Intermodal Rail Yard Facilities (Drayage Truck regulation), title 13, Cal. Code Regs., section 2027;

WHEREAS, the California Environmental Quality Act (CEQA) requires that no project which may have significant adverse environmental impacts may be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts, unless specific overriding considerations are identified which outweigh the potential adverse consequences of any unmitigated impacts;

WHEREAS, CEQA allows public agencies to prepare a plan or other written documentation in lieu of an environmental impact report or negative declaration (i.e., a functional equivalent environmental document), once the Secretary of the Resources Agency has certified an agency's regulatory program pursuant to section 21080.5 of the Public Resources Code;

WHEREAS, pursuant to section 21080.5 of the Public Resources Code, the Secretary of the Resources Agency has certified that portion of the ARB's regulatory program that involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans;

WHEREAS, ARB's certified regulatory program provides that when an action contemplated by the Board may have a significant effect on the environment, ARB staff shall prepare a staff report that shall contain a description of the proposed action, an assessment of anticipated significant long or short-term adverse and beneficial environmental impacts associated with the proposed action and a succinct analysis of those impacts, which shall include a discussion of feasible mitigation measures and alternatives to the proposed action;

WHEREAS, concurrent with publication of the 45-Day Notice, ARB issued an Initial Statement of Reasons (Staff Report) that included an environmental analysis that addressed the potential long and short-term environmental impacts related to the proposed amendments. The environmental analysis found that the amendments will not have a significant adverse effect on the environment, and that the amendments will achieve significant emission reduction benefits beyond the emission reductions that would have otherwise been achieved if the amendments were not adopted;

WHEREAS, at the December 17, 2010 public hearing, the Board adopted Resolution 10-45 (a copy of which is attached hereto as Attachment 1), which directed the staff to modify the initially proposed amendments that were part of the 45-Day Notice by, among other things, not deleting the requirement that all drayage trucks must meet or exceed the Phase 2 requirements by December 31, 2013, and by requiring all Class 7 drayage trucks operated in the South Coast Air Basin to be equipped with Level 3 VDECS by December 31, 2011;

WHEREAS, Resolution 10-45 further directed the Executive Officer to make the modifications to the initially proposed amendments to the regulation available for public comment for a period of 15 days, that he consider written comments submitted during the 15-day comment period, make such further modifications as may be appropriate in light of the comments received, and that he should return to the Board for further consideration if he determines that this is warranted;

WHEREAS, Resolution 10-45 also directed the Executive Officer to prepare and approve written responses to comments received, including comments raising significant environmental issues, as required by Government Code section 11346.9, Public Resource Code section 21080.5(d)(2)(D), and Cal. Code Regs., title 17, section 60007, to determine whether there are feasible alternatives or mitigation measures that could be implemented to reduce or eliminate any potential adverse environmental impacts, while at the same time addressing the serious economic recession and its impact on industry and residents of the State, to make findings as required by Public Resources Code section 21081 if the proposed amendments would result in one or more significant adverse environmental effects, and to take final action to adopt the proposed amendments to the Drayage Truck regulation, as modified in the publicly noticed 15-day changes;

WHEREAS, on May 19, 2011, Executive Officer issued the modified regulation, reflecting the amendments considered by the Board and other conforming modifications, which were made available for public comment for a period of 15-days, with the changes to the originally proposed text clearly indicated, in accordance with the provisions of title 1, California Code of Regulations, section 44 (15-Day Notice);

WHEREAS, written comments were received during the initial 45-day comment period and after issuance of 15-day comment period and oral comments were received as part of the testimony taken at the December 17, 2010 hearing;

WHEREAS, pursuant to section 11346.9 of the Government Code, ARB staff prepared a Final Statement of Reasons (a copy of which is attached hereto as Attachment 2) that responded to comments received by ARB during this rulemaking and further addressed the effect of the amendments, as modified by the 15-Day Notice, on the environment;

WHEREAS, among the comments received were comments raising significant environmental issues for which responses have been prepared by staff and reviewed by the Executive Officer; and

WHEREAS, the Executive Officer has reviewed the amendments as modified by the 15-Day Notice, considered whether such amendments had a potential significant environmental effect, and, if so, whether such an effect can be reduced or eliminated by adoption of feasible alternatives to the amendments or mitigation measures;

WHEREAS, the Executive Officer has deemed it is necessary to bifurcate the amendments to section 2027, title 13, Cal. Code Regs., from the proposed amendments to sections 2025, title 13, Cal. Code Regs. and sections 95301 to 95307, 95309, and 95311, title 17, Cal. Code Regs. because the Drayage Truck regulation is presently in effect and the amendments, many of which are intended to clarify the rights and responsibilities of stakeholders under the existing regulations, need to be submitted to the Office of Administrative law and become operative as soon as possible.

NOW, THEREFORE, IT IS ORDERED that the recitals and findings contained in Resolution 10-45, Attachment 1, are incorporated by reference herein.

IT IS FURTHER ORDERED that I hereby certify that the environmental analysis prepared as part of the Staff Report for the amendments to the Drayage Truck regulation and updated in the Final Statement of Reasons, was prepared in accordance with the requirements of ARB's certified regulatory program under CEQA.

IT IS FURTHER ORDERED that I hereby approve each of the written responses to comments raising significant environmental issues in this rulemaking, as set forth in Attachment 2.

IT IS FURTHER ORDERED that after fully considering the amendments as modified by the 15-Day Notice, the environmental analysis, and the full record before me, I find that:

The amendments will not result in any adverse impacts to the environment but will achieve greater air quality benefits by, among other things, maintaining the Phase 2 compliance requirements for all drayage trucks, including Class 7 trucks, which were previously not covered; requiring all Class 7 drayage trucks operated in the South Coast Air Basin to be equipped with Level 3 VDECS by December 31, 2011; and by broadening the definition of drayage trucks covered by the regulation to include trucks

that engage in off-port and intermodal rail yard facilities dray-off operations, effectively closing a loophole in the regulation.

Because no adverse environmental impacts were identified as resulting from implementing the amendments to Drayage Truck regulation, no mitigation measures, findings or statement of overriding considerations are required.

IT IS FURTHER ORDERED, the amendments to title 13, CCR, section 2027, as set forth in the Final Regulation Order, which is attached hereto as Attachment 3, are adopted.

Executed this 19th day of September 2011, at Sacramento, California.

/S/

James N. Goldstene
Executive Officer

Attachments