

State of California
AIR RESOURCES BOARD

EXECUTIVE ORDER R-12-009

Adoption of Amendments to the Regulation **for** Mobile Cargo Handling Equipment at
Ports and Intermodal Rail Yards

WHEREAS, on September 22, 2011, the Air Resources Board (ARB or Board) conducted a public hearing after issuance of a Notice of Public Hearing (45-Day Notice) to consider the approval for adoption of amendments to the "Regulation for Mobile Cargo Handling Equipment at Ports and Intermodal Rail Yards (CHE regulation), title 13, California Code of Regulations (Cal. Code Regs.), section 2479;

WHEREAS, ARB has a regulatory program certified under Public Resources Code section 21080.5, and pursuant to this program ARB conducts environmental analyses to meet the requirements of the California Environmental Quality Act (CEQA);

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;

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 potential environmental impacts related to the proposed amendments given California's economy and its impact on operation of cargo handling equipment emission sources;

WHEREAS, the environmental analysis found that the amendments will have no adverse impact on aesthetics, land-use/planning, population and housing, transportation, agricultural and forestry resources, cultural resources, mineral resources, public services, utility and service systems, geology and soils, hydrology and water quality, or recreation;

WHEREAS, the environmental analysis further found that the amendments will not impact the intended goals of the initially adopted CHE regulation – to attain 85 percent diesel PM and 75 percent NO_x emissions reductions relative to the 2005 baseline by 2020 – and, for all ports, with the exception of the Port of Humboldt Bay, and all intermodal rail yards, will not have a significant impact on air quality;

WHEREAS, the environmental analysis found that for the Port of Humboldt Bay, the amendment to exempt the port from the CHE regulation's requirements will result in a

slight emissions increase, but because of decreased activity at the port, emissions will be less than the baseline used at the time the CHE regulation was initially adopted:

WHEREAS, at a public hearing on September 22, 2011, after consideration of the Staff Report and public comments received, the Board adopted Resolution 11-30, which directed the staff to modify the initially proposed amendments that were part of the 45-Day Notice, consistent with the resolution and the suggested modifications presented by staff in Attachment B to the resolution (a copy of the resolution is attached hereto as Attachment 1);

WHEREAS, in Resolution 11-30, the Board 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, and make such further modifications as may be appropriate in light of the comments received;

WHEREAS, the Board further directed the Executive Officer to complete the regulatory modification and – as the decision maker for the purposes of California Code of Regulations, title 17, section 60007 – the environmental review process in accordance with the requirements of the Administrative Procedure Act and CEQA under ARB's certified regulatory program, approve the written responses to comments raising significant environmental issues, and take final action to adopt the proposed amendments to CHE regulation as modified, or return the matter to the Board for further consideration if he determines it is warranted;

WHEREAS, on June 15, 2012, ARB issued a Notice of Availability of Modified Text and Additional Documents that reflected the amendments considered by the Board and other conforming modifications and included an updated economic and emission benefits analysis, all of which were made available for public comment, with the changes to the originally proposed text clearly indicated, in accordance with the provisions of title 1, California Code of Regulations, section 44 (Notice of Modified Text, a copy of which is attached hereto as Attachment 2);

WHEREAS, written comments were received during the initial 45-day comment period and after issuance of the Notice of Modified Text, and oral comments were received as part of the testimony taken at the September 22, 2011 Board hearing, and among the comments received were comments that raised environmental issues; and

WHEREAS, ARB staff has reviewed and summarized the comments received, including comments raising environmental issues, and prepared written responses thereto (a copy of which is attached hereto as Attachment 3).

NOW, THEREFORE, IT IS ORDERED that the recitals and findings contained in Resolution 11-30 are incorporated by reference herein.

IT IS FURTHER ORDERED that I hereby approve each of the written responses to comments raising significant environmental issues as set forth in Attachment 3.

IT IS FURTHER ORDERED that I hereby certify that the environmental analysis prepared for the amendments to the CHE regulation was prepared in accordance with the requirements of ARB's certified regulatory program under CEQA.

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

Ports and Intermodal Rail Yards Other than the Port of Humboldt Bay

The amendments to the CHE regulation as they apply to all ports and intermodal rail yards, other than the Port of Humboldt Bay, will not result in any adverse impacts to any resource area statewide or in-and-around the ports and intermodal rail yards referenced above;

The amended regulation would substantially reduce both particulate matter (PM) and oxides of nitrogen (NOx) emissions, as compared to the environmental conditions that existed at the time the environmental analysis was prepared, although the emission benefits could, in the short term, be somewhat less than what were projected to occur with the regulation when it was adopted in 2005/2006;

To address this potential for a reduction in projected future emission benefits, the amendments include:

- A requirement that all non-yard truck cargo handling equipment four years and older be annually tested for smoke opacity;
- A requirement that owner/operators who request a third and fourth year compliance extension for equipment for which no verified diesel emission control strategy (VDECS) is commercially available must agree to replace that equipment or some other piece of equipment in the fleet with electric or hybrid models, if such equipment is available and operationally feasible for use;
- A requirement that equipment meeting the Tier 4 family emission limits must be retrofitted with a Level 3 VDECS, if commercially available, within one year of the CHE equipment being acquired;

ARB considered but could not find any other modifications that would eliminate or further lessen the identified potential for a reduction in projected future NOx emission benefits while concurrently meeting the objectives of the amendments to provide compliance flexibility and economic relief to affected industries, and still achieve the long-term emission reductions forecasted for the regulation;

Based on the foregoing, the CHE regulation, as amended, will substantially reduce both PM and NOx emissions, and therefore, the amendments as they apply to all ports and intermodal rail yards, other than the Port of Humboldt Bay, will not result in any significant adverse environmental impacts on air quality.

Port of Humboldt Bay

The amendments to the CHE regulation exempt the low-throughput Port of Humboldt Bay from having to comply with the regulation, which will result in fewer projected future emission benefits compared to reductions forecasted when the regulation was initially adopted in 2005/2006 and may result in a slight increase in emissions in future years compared to the environmental conditions that existed at the time the environmental analysis was prepared.

To avoid or substantially lessen this potential for increased emissions, cargo handling equipment at the Port will be regulated as follows:

- All off-road equipment at the Port will be required to meet the compliance requirements of ARB's In-Use Off-Road Diesel-Fueled Fleets Regulation, Cal. Code Regs., title 13, section 2449 et seq.,
- All on-road motor vehicles will be required to meet the requirements of ARB's Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants from In-Use Heavy-Duty Diesel-Fueled Vehicles, Cal. Code Regs., title 13, section 2025;
- If the Port subsequently exceeds the two-year average annual cargo throughput limit established in the CHE regulation or the population in the surrounding community increases to exceed 50,000 persons, the amendments require that each owner or operator of cargo handling equipment at the Port needs submit a plan for compliance with the CHE regulation;

ARB considered, but could not find, any other feasible mitigation or feasible alternatives to the amendments that would eliminate or further lessen the potential for increased emissions and concurrently meet the objectives of the amendments to provide the needed economic relief to affected industries, with concurrent social and economic benefits to local residents;

Despite the potential for a slight increase in emissions in future years, upon balancing the this potential for an adverse air quality impact against the severe economic conditions at the Port of Humboldt Bay (an approximate 89 percent drop in tonnage throughput between 2005 and 2011), the benefits of this regulatory action, in terms of providing

economic relief to terminal operations and social benefits of employment, are determined to be overriding considerations that warrant approval of the amendments and outweigh and override the potential for any potential adverse emissions impact;

The exemption of the Port of Humboldt Bay from the CHE regulation's requirements will not affect the NAAQS attainment status of the North Coast Air Basin;

IT IS FURTHER ORDERED, the amendments to Cal. Code Regs., title 13, section 2479, as set forth in Attachment 4 hereto, is adopted.

Executed this 2 day of August 2012, at Sacramento, California.

/s/

James N. Goldstene
Executive Officer

Attachments