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ATTACHMENT C

MEMORANDUM

TO: Tom Cackette
Chief Deputy Executive Officer

THROUGH: Kathleen Walsh
General Counsel

FROM: Leslie Krinsk
Senior Staff Counsel

DATE: February 11, 2000

SUBJECT: DISTRICT AUTHORITY TO REGULATE FLEETS

I. INTRODUCTION

The Air Resources Board (ARB) is proposing to adopt a regulation to require transit agencies that operate urban bus fleets to select from two compliance paths for reducing emissions of oxides of nitrogen and diesel particulate matter in the near and long term: a diesel path and an alternative fuel path. During the course of regulation development, the issue was raised whether all or some of California's air pollution control/air quality management districts (Districts) have the legal authority also to regulate transit bus fleets. For the following reasons, we conclude that Districts whose air pollution is classified as "serious" or worse in accordance with the California Clean Air Act (Stats. 1998, Ch. 1568, Sec. 11) possess this authority under the Health and Safety Code.

II. ANALYSIS

We have determined previously that the ARB is authorized to regulate motor vehicle fleets pursuant to its plenary authority to control vehicular sources of air pollution and specific authority to adopt standards and regulations to achieve substantial reductions in emissions from all classes of motor vehicles and motor vehicle fuels (see memorandum dated January 26, 2000, from Leslie Krinsk to Kathleen Walsh). The regulation under consideration will apply to all urban bus fleets in the State. Several Districts, however, have expressed an interest in requiring only the alternative-fuel path within their areas of jurisdiction in order to take advantage of existing clean fuel technology to achieve near-term reductions in heavy-duty vehicle emissions. Based on the provisions we will now discuss, it is clear that a number of Districts can require urban bus fleets under their jurisdiction to comply with the alternative-fuel path.

First, three Districts have specific authority to:

“[r]equire owners of public and commercial fleet vehicles . . . when adding vehicles to or replacing vehicles in an existing fleet or purchasing vehicles to form a new fleet, to purchase vehicles which are capable of operating on . . . clean burning alternative fuel and to require that these vehicles be operated, to the maximum extent feasible, on the alternative fuel. . . .”
(Health and Safety Code section 40447.5(a)).

This quoted provision, added by Stats. 1987, Ch. 1301, Sec. 10, applies to the South Coast Air Quality Management District (SCAQMD) in recognition of the substantial contribution of motor vehicles to the critical air pollution problem in the South Coast Air Basin. The statute also requires that local governments in the basin “must be delegated additional authority from the state in the control of vehicular sources. . . .” Both the Sacramento Metropolitan and the Mojave Desert AQMDs have been given similar authority by the legislature (see Health and Safety Code section 41011 added by Stats. 1988, Ch. 1541, Sec. 3, and Health and Safety Code section 41231, added by Stats. 1992, Ch. 642, Sec. 4, respectively). Clearly, these three Districts are authorized to regulate transit bus fleets independently of the ARB.

Second, the California Clean Air Act requires the Districts to develop attainment plans in consideration of “the full spectrum of emission sources and focus particular attention on reducing the emissions from transportation and area-wide emission sources.” (Health and Safety Code section 40910.) In this respect, Districts with “serious,” “severe,” or “extreme” air pollution “shall, to the extent necessary to meet the requirements of the plan, . . .” include in their attainment plans “[m]easures to achieve the use of a significant number of low-emission motor vehicles by operators of motor vehicle fleets.” (Health and Safety Code section 40919(a)(4). See also, Health and Safety Code sections 40920(a) and 40920.5(a) for Districts with “severe” and “extreme” pollution.)

This language makes it clear that those Districts with serious pollution or worse are authorized to regulate transit bus fleets. We note that the regulation of fleets does not include regulating tailpipe or evaporative emissions from vehicles and engines. We also point out that Districts with “moderate” air pollution and cleaner are not authorized to adopt fleet measures. These Districts would, however, be covered by the ARB fleet regulation.

Given our conclusion that several air districts are authorized independently to require compliance with alternative fuel requirements by fleet operators, there are

several ways in which this may be accomplished. Because these districts and the ARB have concurrent jurisdiction in this area, it is advisable to coordinate approaches in order to maximize efficiency and avoid a conflict of laws. In the event of both a District regulation and an ARB regulation pertaining to transit fleets, the more stringent provisions of each would apply. The situation to be avoided is contradictory requirements and unnecessary additive requirements.

Several options are available in the proper exercise of concurrent authority. First, the Districts could simply defer to the ARB and have the ARB regulation apply to fleets within their boundaries. Second, these Districts could independently adopt a regulation limiting their fleets to one or the other of the ARB-adopted options. Third, the Districts could adopt an approach that differed from the ARB approach and was more stringent, so that the District requirements would apply. (This would be difficult and would require extensive coordination to avoid conflict and promote clarity of regulatory requirements.)

Finally, the approach endorsed by the SCAQMD could be adopted, whereby the ARB would impose the alternative-fuel path on those Districts whose governing boards determine that compliance with the alternative-fuel path would be feasible and desirable in light of local conditions. (Suggested language for this approach, as provided by the SCAQMD, is attached for your reference.) There are, of course, other options and variations on these four basic approaches. Selection of the most appropriate is a policy matter outside the scope of this memorandum.

III. CONCLUSION

In conclusion, Districts with "serious" or worse air pollution are authorized by the Health and Safety Code to regulate vehicle fleets. The concurrent jurisdiction shared by these Districts and the ARB may be exercised in a number of different ways. Coordination of approach is encouraged to ensure that both statewide emission-reduction objectives and sensitivity to local circumstances are considered.

Attachment

Amendment Proposed by South Coast AQMD

SECTION 1956.2, TITLE 13, CCR

Amend proposed section 1956.2, title 13, CCR by adding a new subsection (b) as follows and renumbering the subsequent subsections:

1956.2 Fleet Rule for Urban Transit Bus Operators

(a) To encourage transit agencies that operate urban bus fleets to purchase or lease currently available lower emission alternative-fuel buses, while also providing flexibility to such fleet operators to determine their optimal fleet mix in consideration of such factors as air quality benefits, service availability, cost, efficiency, safety, and convenience, two paths to compliance with this fleet rule are available: the alternative-fuel path and the diesel path. Transit agencies must choose their compliance path, and those choosing the alternative-fuel path shall notify ARB of their intent to follow that path, by January 31, 2001. Reporting requirements for that notification are set forth in subdivision (a)(1) of section 1956.4, 13 CCR.

(b) Notwithstanding subsection (a), transit agencies operating in an area designated an "extreme" ozone nonattainment area pursuant to the federal Clean Air Act shall comply with the alternative-fuel path if, by September 1, 2000, the governing board of the air quality management district with jurisdiction over such area finds by resolution that compliance with the alternative fuel path will be feasible for affected transit agencies and, in light of local conditions, will contribute to the expeditious attainment of air quality standards.