California Environmental Protection Agency

Air Resources Board

LOCATION:
Air Resources Board
Byron Sher Auditorium, Second Floor
1001 I Street
Sacramento, California 95814

This facility is accessible by public transit. For transit information, call (916) 321-BUSS, website: http://www.sacrt.com
(This facility is accessible to persons with disabilities.)

PUBLIC MEETING AGENDA

January 27, 2006
8:30 a.m.

DAY 2

Item #

06-1-6: Public Meeting to Consider an Update on the Implementation of the ARB/Railroad Statewide Agreement and to Take Action as Appropriate.

Staff will provide an update to the Board on the implementation efforts under the Statewide Rail Yard Agreement and provide clarifications on individual elements of the Agreement. As a continuation of its discussion at the October 27, 2005 meeting, the Board will consider whether to take any action on the Agreement – including but not limited to expressing support for the Agreement or voting to rescind the Agreement – or may take no action, which would leave the Agreement in effect. The Board will accept additional public testimony at the January 27 meeting, provided that such testimony is limited to comments on new documents clarifying the Statewide Agreement or updating the Board on its implementation.

OPEN SESSION TO PROVIDE AN OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO ADDRESS THE BOARD ON SUBJECT MATTERS WITHIN THE JURISDICTION OF THE BOARD.

Although no formal Board action may be taken, the Board is allowing an opportunity to interested members of the public to address the Board on items of interest that are within the Board's jurisdiction, but that do not specifically appear on the agenda. Each person will be allowed a maximum of five minutes to ensure that everyone has a chance to speak.

TO SUBMIT WRITTEN COMMENTS ON AN AGENDA ITEM IN ADVANCE OF THE MEETING:

CONTACT THE CLERK OF THE BOARD, 1001 I Street, 23rd Floor, Sacramento, CA 95814 (916) 322-5594
FAX: (916) 322-3928
ARB Homepage: www.arb.ca.gov

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- Assistance in a language other than English, please go to http://www.arb.ca.gov/as/eeo/languageaccess.htm or contact the Air Resources Board Bilingual Coordinator, at (916) 324-5049.

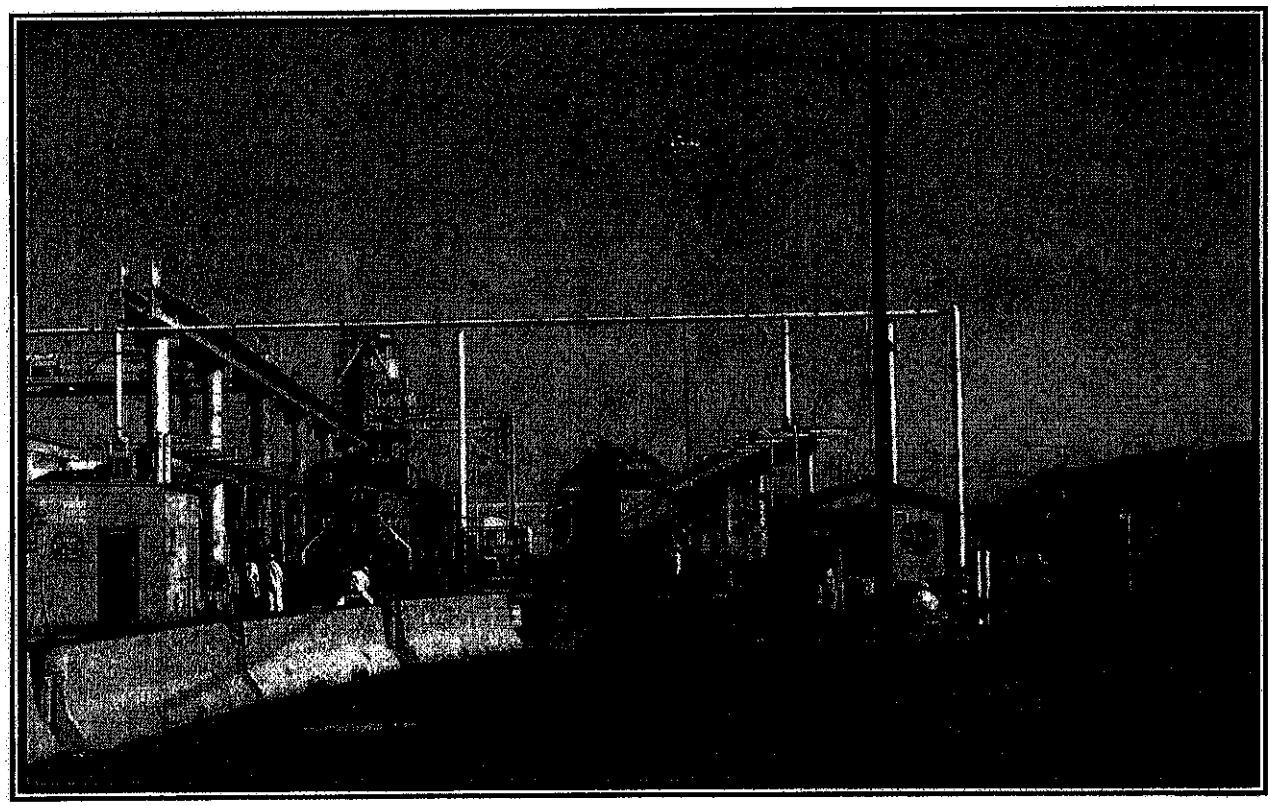
THE AGENDA ITEMS LISTED ABOVE MAY BE CONSIDERED IN A DIFFERENT ORDER AT THE BOARD MEETING.

SMOKING IS NOT PERMITTED AT MEETINGS OF THE CALIFORNIA AIR RESOURCES BOARD

California Environmental Protection Agency

Air Resources Board

Status Report on the Implementation of the 2005 ARB/Railroad Statewide Agreement



Release Date: January 13, 2006

State of California
California Environmental Protection Agency
AIR RESOURCES BOARD
Stationary Source Division

Status Report on the Implementation of the ARB/Railroad Statewide Agreement

Date of Release: January 13, 2006
Board Meeting Date: January 27, 2006

Location:

Air Resources Board – Byron Sher Auditorium
1001 I Street
Sacramento, California 95814

This report has been reviewed by the staff of the Air Resources Board and approved for publication. Approval does not signify that the contents necessarily reflect the views and policies of the Air Resources Board, nor does mention of trade names or commercial products constitute endorsement or recommendation for use.

Acknowledgments

This report was prepared with the assistance and support from the other divisions and offices of the Air Resources Board.

In addition, we would like to acknowledge the assistance and cooperation that we have received from many individuals and organizations.

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ATTACHMENT

THE ARB/RAILROAD STATEWIDE AGREEMENT - CLARIFICATION OF THE RELEASE CLAUSE AND THE EFFECT OF THE AGREEMENT ON STATE AND LOCAL AUTHORITY

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I. SUMMARY AND INTRODUCTION

A. Introduction

On June 24, 2005, the Executive Officer of the Air Resources Board (ARB or Board) entered into a statewide railroad pollution reduction agreement (Agreement) with Union Pacific Railroad (UP) and BNSF Railway (BNSF). Since the Agreement was signed, there has been extensive public discussion and concern about the Agreement. At an October 27, 2005, public meeting, the Board received a report from staff on the Agreement and considered both written comments and the testimony of 74 witnesses, many of whom urged the Board to rescind the Agreement. At the conclusion of that meeting, the Board decided not to take action to either ratify or rescind the Agreement, and continued its consideration to the January 2006 meeting. This course left the Agreement in effect in the interim. Accordingly, ARB staff (staff) and the participating railroads have continued to implement the Agreement.

At the October meeting, the Board directed staff to return to the Board at its January public meeting with clarifications of the Agreement and a six-month status report on the implementation of the Agreement. In developing the clarifications, the Board directed staff to work with the railroads. The Board indicated that it was its intent to limit testimony at the January Board meeting to the clarifications of the Agreement or other new information presented. Finally, the Board emphasized the need for staff to continue its efforts to work with railroads, community stakeholders, and local air districts in connection with rail yard emissions.

Based on the public testimony received both in October and January, the Board is expected to consider a number of options regarding the Agreement, including taking no action and leaving the Agreement in effect, expressing support for the Agreement, or voting to rescind the Agreement.

The remainder of this chapter presents an overview of the basic elements of the Agreement and an overall summary of the progress made in implementing the Agreement to date. Chapter II of the report presents clarifications of the Agreement which is included as an Attachment. The clarifications principally relate to the operation and scope of the release clause, but also describe the effect of the Agreement on pre-existing activities. Chapter III provides a progress report on the activities undertaken since the Agreement was initiated.

B. Overview of the Agreement

The Agreement secured the commitment of UP and BNSF to expeditiously implement a number of measures to reduce emissions from locomotives throughout California. The Agreement establishes a statewide program to reduce diesel particulate emissions from locomotives at the State's rail yards by:

- Phasing out non-essential idling by locomotives;
- Installing idling reduction devices on more than 300 California-based locomotives;
- Identifying and expeditiously repairing locomotives with excessive smoke; and
- Maximizing the use of very low sulfur (15 parts per million (ppm)) diesel fuel by January 1, 2007, six years before such fuel is required by federal regulation.

Staff estimates that these elements of the Agreement will produce approximately a 20 percent reduction in locomotive diesel particulate matter (PM) emissions in and around rail yards and throughout the State.

In addition to the statewide idling restrictions, cleaner fuel, and smoke repair requirements, 32 major rail yards throughout the State are covered by additional elements of the Agreement. Program Coordinators are required at each of the 32 covered yards and they are responsible for implementing and insuring compliance with the idling and visible emission elements. The railroads have also committed to evaluating and reducing pollution risks at the 17 largest rail yards, known as Designated Rail Yards. Under the Agreement, the railroads will meet with local communities and local air districts at these 17 yards to develop near-term mitigation measures that can be implemented to reduce emissions and risk. The railroads will develop information so that ARB can perform health risk assessments to characterize and quantify the risk from these rail yards. These assessments will then be used to identify the need for and benefits of further mitigation measures. Public participation is required at each yard during these efforts.

The Agreement commits $3.5 million by the railroads to continue to evaluate the feasibility of installing diesel particulate traps on locomotives, and to evaluate other technologies, such as hybrid and alternative fueled locomotives. Consistent with the provisions of Assembly Bill (AB) 1222, signed by the Governor on October 6, 2005, the Agreement includes a commitment to work together to evaluate remote sensing technology to identify in-use locomotives with excessive emissions.

Failure by the railroads to implement any of these actions is subject to financial penalties. Individual violations of the idling and repair provisions can result in fines of up to $1,200 per locomotive, per day. Violations of major program elements by a participating railroad, including failure to implement specific requirements, would ultimately result in penalties of up to $40,000 per month per element.

A copy of the Agreement can be found on the ARB's website at http://www.arb.ca.gov/railyard/ryagreement/ryagreement.htm.

C. Overall Progress on the Implementation of the Agreement

Staff and railroads began implementing the Agreement in July 2005. A summary of the status of the key implementation requirements is provided in Table 1. As Table 1 illustrates, the railroads and ARB staff have met, or are on schedule to meet, each of the requirements that are specified during the first six months of implementation of the Agreement. Specific details on the progress made to implement each program element are provided in Chapter III. The only program requirement that has not been fully implemented by the anticipated dates in the Agreement is related to the timing of the community meetings for the Designated Rail Yards, which were to be completed by November 1, 2005.

Some of these community meetings were delayed in response to requests from community members and local air districts to delay these meetings until after the Board's consideration of the Agreement, which did not occur until late October. It is anticipated that these meetings will occur in the near future, and should all be completed by the end of April.

D. Public Participation as Part of the Agreement

By signing the Agreement, both UP and BNSF have committed to a process of outreach and communication with residents of the communities and the local air districts affected by their operations at the 17 major rail yards. Staff has also committed to participate in this outreach effort. This effort will help to ensure that local communities and others can have a meaningful role in determining what specific actions are taken to reduce emissions on a rail yard by rail yard basis. Under the Agreement, the railroads are obligated to:

- Meet with community members to identify measures to reduce the impact of rail yard emissions on adjacent residential neighborhoods;
- Provide periodic progress reports to community representatives on the implementation of risk mitigation plans and preparation of risk assessments;
- Meet with representatives from the affected community, staff, and the local air district to discuss the results of the draft health risk assessment for each yard;
- Upon completion of risk assessments, hold meetings within 60 days to discuss the findings and gain community input on mitigation measures;
- Involve community representatives in semi-annual meetings on efforts to develop and deploy new technologies to reduce locomotive emissions; and
- Establish a system to enable local residents to voluntarily report locomotives that do not comply with smoke limits or idling restrictions.

Staff is also committed to working with community residents and local air districts to implement various actions related to the Agreement. These include:

- Working cooperatively with local air districts to establish uniform health risk assessment guidelines;
- Providing for a public review of health risk assessment guidelines;
- Working cooperatively with local air districts to evaluate, and where appropriate, partner on medium- and longer-term control technology assessments and demonstrations, and;
- Working cooperatively with local air districts to seek funding on mitigation measures.

Table 1
Implementation Status of Individual Program Elements
(Thru July 31, 2006)

PROGRAM REQUIREMENTS	2005					2006			
	JUL 31	AUG 31	SEPT 30	OCT 31	DEC 31	JAN 31	APR 30	JUN 30	JUL 31
IDLING REDUCTION									
Program Coordinators	✓								
Locomotive Inventory		✓							
Community Reporting Process		✓							
Railroad Training Programs			✓						
Adjudicatory Appeal Process			✓						
Training Implementation Status				✓					
35% Idle Devices									
VISIBLE EMISSION (VE)									
Program Coordinators	✓								
Program Establishment		✓							
Community Reporting Process		✓							
Railroad Training Programs			✓						
VE Inspection Report			✓						
Training Implementation Status				✓					
Annual Program Review									
EARLY REVIEW OF EMISSIONS/MITIGATION									
Emission Inventory				✓					
Community Meetings				20%	20%	On-going	Anticipated		
Mitigation Plans					✓				
HEALTH RISK ASSESSMENTS (HRA)									
HRA Guidelines							Anticipated		
Study Plans			✓					✓	
TECHNICAL ASSESSMENTS									
Continue Study of DPF/DOC				✓					
DPF/DOC Use-Europe & U.S.					✓				
Remote Sensing Pilot Program					✓				
Public Meetings									
COMPLIANCE									
Inspection Protocols					✓				
Program Review Protocol					✓				
ARB STATUS REPORTS						Anticipated			

✓ denotes complete

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II. CLARIFICATIONS OF THE AGREEMENT

During the public review of the voluntary Agreement, a number of parties who are not signatories to the Agreement expressed concern about the meaning of the release clause contained in program element 11(c) of the Agreement. Concerns were also raised about the impact of the Agreement on the exercise of preexisting authority.

As directed by the Board, staff in consultation with the railroads, worked to clarify how the Agreement affects a number of these concerns. This effort resulted in the staff's development of the document entitled "The ARB/Railroad Statewide Agreement - Clarification of the Release Clause and the Effect of the Agreement on State and Local Authority." The document is presented as an Attachment to this report. This document provides additional details and explanation regarding how the release clause operates, when the release clause may be triggered, and how the Agreement affects the use of preexisting authority. It does not modify the Agreement.

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III. PROGRESS REPORT ON THE IMPLEMENTATION OF THE AGREEMENT

Staff and railroads began implementing the Agreement in July 2005. As presented in Table 1, the railroads and staff have met, or are on schedule to meet, each of the requirements that are specified during the first six months of implementation of the Agreement. Key program requirements that have been fully implemented include the following:

1. Identification of program coordinators at each rail yard;
2. Development of intrastate locomotive inventories;
3. Preparation of idling and visible emission reduction training plans and programs;
4. Development of idling and visible emission community reporting processes;
5. Completion of visible emissions inspection reports;
6. Development of enforcement protocols;
7. Submittals of locomotive technology assessments; and
8. Initiation of the locomotive remote sensing pilot program.

The only program requirement that has not been fully implemented by the anticipated dates in the Agreement relates to the timing of the community meetings for the Designated Rail Yards, which were to be completed by November 1, 2005. Some of these community meetings were delayed in response to requests from community members and local air districts to delay holding these meetings until after the Board's consideration of the Agreement, which did not occur until late October. It is anticipated that these meetings will occur in the near future, and should all be completed by the end of April.

Details associated with the progress made to date to implement the program elements is described in this chapter.

A. Idle Reduction Program

The railroads have made significant efforts to implement the idling reduction program required by the Agreement. The following discussion summarizes the progress to date.

1. Idling Reduction Requirements of the Agreement

Under the Agreement, intrastate and interstate locomotives must limit non-essential idling through the use of automated idle reduction devices or by manually shutting down engines to prevent non-essential idling in excess of 60 consecutive minutes. Essential idling is defined as idling necessary to:

- Ensure adequate air brake pressure for locomotive and railcars;
- Ensure other safety related purposes;

- Prevent freezing of engine coolant;
- Ensure compliance with federal guidelines for occupied locomotive cab temperatures; and
- Engage in necessary maintenance activities.

The Agreement also provided railroads with the option to expand the essential idling list, if necessary and appropriate, by September 1, 2005. Neither railroad submitted a request for an expanded list of essential idling.

The preferred method of all parties to reduce non-essential idling is the use of automated idle reduction devices. Under the Agreement, where locomotives are equipped with idle reduction devices, non-essential idling is limited to no more than 15 consecutive minutes. For locomotives not equipped with idling reduction devices, locomotives are to be shutdown as soon as it is clear that essential idling is not required, and in no cases, is non-essential idling to exceed more than 60 consecutive minutes. In those situations where there is uncertainty over the expected duration of idling, the railroads are obligated to make efforts to notify their train crews if the anticipated wait time could be greater than 60 consecutive minutes so that train crews can shut down their locomotive(s). Railroad training programs are required to inform and educate train crews and other railroad operational employees about the need to faithfully observe the restrictions on idling.

B. Program Coordinators

Both railroads submitted their lists of idling reduction Program Coordinators for all of the Designated and Covered rail yards by August 1, 2005. This information has been posted on the ARB rail yard website under "Program Submittals" at http://www.arb.ca.gov/railyard/ryagreement/rrsubmittal.htm.

1. Intrastate Locomotive Inventories

Inventories of California intrastate locomotives were submitted by both UP and BNSF. These inventories have been subsequently updated by both railroads to reflect changes in the intrastate locomotive fleet through December 31, 2005. This information is shown below in Table 2. As can be seen, as of December 31, 2005, the railroads operate nearly 430 intrastate locomotives within the State. This information is posted on the ARB rail yard website under "Program Submittals".

Table 2
Annual Requirements for Installation of Idle-Reduction Devices

Number of Intrastate Locomotives	Number Equipped Prior to June 2005	Additional Number to be Equipped by June		
		2006	2007	2008
428	117	109	110	92

2. Installation of Idle Reduction Devices on Intrastate Locomotives

The railroads are on schedule to meet their commitments to install idle reduction devices on their intrastate locomotive fleet. Based on the information provided by the railroads, of the 428 intrastate locomotives operating in the State, 117 were equipped with idle reduction devices as of June 30, 2005. Information on the intrastate locomotive fleet, including identification by unit number of locomotives equipped with idle reduction devices, are posted on the ARB rail yard website under "Program Submittals". Under the provisions of the Agreement, the remaining 311 must be equipped by June 2008, under the schedule shown in Table 2.

Under the Agreement, the railroads must equip at least 109 intrastate locomotives with idle reduction devices by June 30, 2006. As of January 1, 2006, the railroads had installed 21 of the required 109 idle reduction devices and placed orders for additional idle reduction kits. Both railroads indicated that they now have sufficient quantities of kits, and that the remaining required installations will occur on an expedited basis between now and June 30, 2006. Both railroads indicate that they will meet their June 2006 idle reduction device installation obligations.

As can be seen in Table 3, currently more than a third of the 430 intrastate locomotives (switchers and local locomotives) in California operation have been equipped with idle reduction devices. This is more than twice the rate of installations that have occurred to date in the rest of the country. Staff expects that the Agreement will ensure that progress in California is significantly accelerated relative to the rest of the nation as a significant portion of the railroads locomotive retrofit effort is targeted towards California.

Table 3
Installation of Idle-Reduction Devices in California Switcher and Local Locomotives Relative to National Fleet

California Switcher & Local Fleet			National Switcher & Local Fleet		
Current Inventory	Installed By January 1 2006	Percent of Fleet*	Current Inventory	Installed By January 1 2006	Percent of Fleet*
428	138	**32%**	3,401	510	**15%**

3. Idle Reduction Training Programs

a) Development of Training Program

Both railroads have submitted copies of their idle reduction training programs, and their plans to train appropriate railroad staff on the idling provisions and locomotive shutdown requirements of the Agreement. This includes conducting training for:

- Management and supervisors;
- Train crews;
- Dispatchers;
- Call center employees; and
- Rail yard employees.

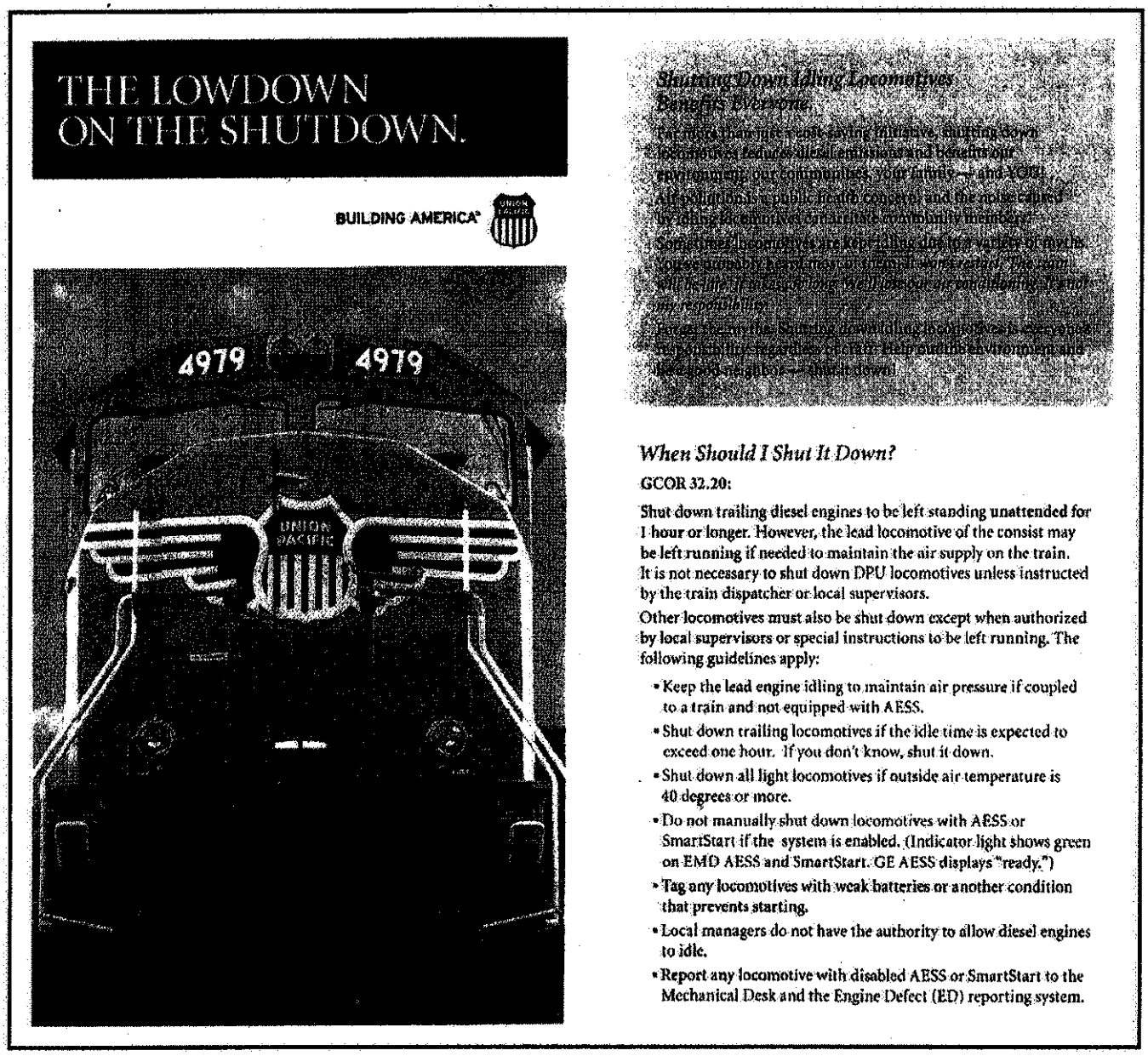
For both railroads, the idle reduction training programs define the idle reduction procedures they will put in place, provide an overview of the idle reduction requirements of the Agreement, including specific information on the difference between essential and non-essential idling, and define the specific idling limitations created by the Agreement. In order to begin training appropriate railroad staff, the railroads have developed a training video (BNSF) and a PowerPoint presentation (UP) to train crews and others as part of their daily safety briefings.

Staff has reviewed the key elements of the railroads' idle reduction training programs. In implementing the idle reduction training programs, the railroads have taken an appropriate interpretation of the requirements in the Agreement. Examples of newly established policies include instructions by UP that:

- All locomotives not attached to a train are to be shut down unless the outside air temperature is below 40 degrees Fahrenheit;
- Trailing locomotives be shut down if the idle time is expected to exceed one hour;
- If you don't know, shut it down; and
- Local managers do not have the authority to allow diesel engines to idle.

These policies have been incorporated into railroad employee training materials. An example is shown for UP in Figure 1.

Figure 1:
Example of Idle Reduction and Locomotive Shutdown Instructions



THE LOWDOWN
ON THE SHUTDOWN.

BUILDING AMERICA®

4979 4979

UNION PACIFIC

Shutting Down Idling Locomotives Benefits Everyone.

For more than just a cost-saving initiative, shutting down locomotives reduces diesel emissions and benefits our environment, our communities, your future — and YOU!

- Air pollution is a public health concern and the noise caused by idling locomotives creates a community nuisance.
- Sometimes locomotives are kept idling due to a variety of myths. Some of these myths are listed below. Don't be one of those employees who will be left behind as we move forward. We'll be out of compliance if we don't shut down. It's not our responsibility.
- Forget the myths. Shutting down idling locomotives is everyone's responsibility, regardless of craft. Help us help the environment and be a good neighbor — shut it down!

When Should I Shut It Down?

GCOR 32.20:

Shut down trailing diesel engines to be left standing unattended for 1 hour or longer. However, the lead locomotive of the consist may be left running if needed to maintain the air supply on the train. It is not necessary to shut down DPU locomotives unless instructed by the train dispatcher or local supervisors.

Other locomotives must also be shut down except when authorized by local supervisors or special instructions to be left running. The following guidelines apply:

- Keep the lead engine idling to maintain air pressure if coupled to a train and not equipped with AESS.
- Shut down trailing locomotives if the idle time is expected to exceed one hour. If you don't know, shut it down.
- Shut down all light locomotives if outside air temperature is 40 degrees or more.
- Do not manually shut down locomotives with AESS or SmartStart if the system is enabled. (Indicator light shows green on EMD AESS and SmartStart. GE AESS displays "ready.")
- Tag any locomotives with weak batteries or another condition that prevents starting.
- Local managers do not have the authority to allow diesel engines to idle.
- Report any locomotive with disabled AESS or SmartStart to the Mechanical Desk and the Engine Defect (ED) reporting system.

Both railroads will develop more intensive, in-depth training for train crews to be conducted as part of the annual safety training they must complete under Federal Railroad Administration regulations. Information on the railroads' idle reduction training programs is posted on the ARB rail yard website under "Program Submittals." Staff is evaluating the training programs developed by the railroads to ensure that the final training programs implemented by the railroads adequately satisfies all aspects and requirements of the Agreement.

b) Implementation of Training Program

Both railroads have begun the process of training locomotive operators and other appropriate railroad employees on the idling provisions and requirements of the Agreement. UP and BNSF combined plan to provide 6,000 railroad employees, primarily located in California, with the necessary training. Since some employees, such as dispatchers and potentially some train crews, are impacted by the Agreement but may not be stationed in California, a significant number of railroad employees outside of California that have also been trained on the idling provisions and requirements of the Agreement is included in this total. The number of railroad employees that have been trained or have been scheduled for training by January 31, 2006 is provided in Table 4.

Table 4
Number of Railroad Employees Trained Regarding
The Idle Reduction Program

Employee Classification	Idle Training by 01/31/06
Managers	117
Supervisors	91
Dispatchers	46
Response Center	16
Train Crews	2,411
Mechanical	617
Other	28
Total Trained	**3,326**

C. Visible Emission Reduction Program

Similar to the idling reduction program, both railroads have begun to implement the visible emission reduction program. The following discussion summarizes the implementation efforts to date.

1. Requirements of the Visible Emission Reduction Program

Under the Agreement, UP and BNSF must establish a visible emission reduction and repair program that will ensure a 99 percent compliance rate for locomotives operating within the state. The program must include the following key elements:

- Annual inspections of all locomotives that operate in California through the use of an opacity meter or a certified Visible Emissions Evaluator (VEE), and an additional number of locomotive inspections to ensure compliance with the performance standard;
- Identification of locomotives exceeding a steady state opacity measurement of 20 percent;

- Within 96 hours inspection of identified locomotives and as appropriate repair of locomotives to meet the applicable federal locomotive visible emission certification standard before they can be returned to service; and
- Annually provide a report on the total number of visible emissions inspections conducted by each railroad and the results of those inspections.

The visible emission requirements do not affect pre-existing and continuing state or local authority or prerogatives to issue notice of violations for noncompliance with nuisance and opacity provisions in the Health and Safety Code Sections 41700-41701.

2. Program Coordinators

Both railroads submitted their lists of visible emission reduction Program Coordinators for all of the Designated and Covered rail yards by August 1, 2005. This information has been posted on the ARB rail yard website under "Program Submittals" at http://www.arb.ca.gov/railyard/ryagreement/rrsubmittal.htm.

3. Development of Visible Emission Reduction and Repair Program

Both UP and BNSF had submitted the required plans to establish their visible emission reduction and repair programs on schedule. The plans submitted by the railroads specify the number of visible emission inspections that they propose to perform annually. The plans also identify the procedures that will be implemented to identify, inspect, and repair locomotives with excessive visible emissions. Staff is evaluating the visible emission reduction and repair programs developed by the railroads to ensure that they adequately satisfy all aspects and requirements of the Agreement.

The railroads have begun to initiate the visible emission inspections specified under their visible emission reduction and repair programs. The number of inspections in 2005 conducted by each railroad under this program is shown in Table 5 below. Locomotives operating in California and exceeding a steady state opacity measurement of 20 percent are required to be sent to maintenance facilities to determine whether repairs are needed to comply with applicable visible emission standards as set forth in the national railroad regulation.

Table 5
Number of Visible Emission Inspections Performed in 2005

2005	Certified Opacity Meter	U.S. EPA Method 9 *	Non-Certified Visible
1st Quarter ***	24	2,931	1,446
2nd Quarter ***	22	2,849	1,487
3rd Quarter	94	2,747	1,509
4th Quarter **	57	1,887	968
Total	197	10,414	5,410

* Personnel (railroad or contract employees) certified as visible emission evaluators under U.S. EPA Method 9.
** Does not include December 2005 data from UP.
*** Does not include 1st or 2nd Quarter data from BNSF.

Under the Agreement, both railroads are now beginning to collect data for visible emission inspections by type of inspection method and by whether the inspection occurred in California or one of the other 23 or more states in each of their systems. Data in the future will be collected and presented for California and by type of visible emission method.

4. Visible Emission Reduction Training Programs

a) Development of the Training Program

Similar to the idle reduction program, both railroads have submitted information on the development of their visible emission reduction and repair training programs, and their plans to train appropriate railroad staff regarding the programs. Both railroads have begun their training efforts. The railroads have indicated they intend to train the same staff as trained on the provisions of the idle reduction program.

For both railroads, the training programs provide an overview of the visible emission reduction and repair programs developed, including specific information on the repair requirements of the Agreement. Similar to the idle reduction training programs, the railroads will utilize a training video (BNSF) and a PowerPoint presentation (UP) to be shown over the next few months to train crews and others as part of their daily safety briefings. Both railroads are developing more intensive, in-depth training. Information on the railroads' visible emission reduction and repair training programs has been posted on the ARB rail yard website under "Program Submittals." Staff is evaluating the training programs developed by the railroads to ensure that the final training programs implemented by the railroads adequately satisfies all aspects and requirements of the Agreement.

b) Implementation of Training Program

The number of employees to be trained by January 31, 2006, by employee classification, for both railroads is shown below in Table 6. Some employees, such as dispatchers and potentially some train crews, are not stationed in California but will receive training in the visible emission reduction and repair program, because they either work with or operate locomotives that operate in the state.

Table 6
Total Number of UP and BNSF Employees to be Trained
By January 31, 2006

Employee Classification	Certified U.S. EPA Method 9	Non-Certified VE Training	General Awareness Training
Managers	30	224	44
Supervisors	2	5	84
Dispatchers	15	42	40
Response Center	0	0	13
Train Crews	0	0	2,010
Mechanical	66	173	550
Other	1	4	33
Total Trained	**114**	**448**	**2,774**

D. Community Complaint Process

This section discusses the railroads' implementation efforts to establish a community complaint process for idling and smoking locomotives.

1. Pre-existing Railroad Complaint Process

Prior to the implementation of the Agreement, each railroad had established procedures to process, handle, and respond to community complaints. Under these procedures, each railroad utilizes a national phone call center to receive and record complaints regarding its operations instead of individual local phone centers. The national phone systems allow the railroads to utilize a centrally trained staff and existing mechanisms that allows the public to register complaints about idling or smoking locomotives from all locations in the state at any time. The systems operate 24 hours a day and 365 days a year, and utilizes computerized mechanisms to track and forward complaints to the appropriate company staff to respond.

The call center phone numbers for each railroad are:

- **Union Pacific Railroad**
  1-888-UPRRCOP or 1-888-877-7267

- **BNSF Railway**
  1-800-308-7513

While each railroads call center system is different, they are similarly structured in that calls received are logged and appropriate railroad employees are directed to respond.

2. Establishment of Railroad Complaint Process Under the Agreement

By August 31, 2005, both railroads submitted their plans to develop a process for informing members of the community regarding:

1) How community members can report excessively idling locomotives and locomotives with excessive visible emissions to each railroad;
2) What steps will be taken by the railroads to investigate and correct, if appropriate, the problems or concerns noticed in the complaint; and
3) How each railroad will notify community members of what corrective action(s) have been taken by the railroad to address any complaints.

According to the plans, the railroads will utilize their existing call centers and phone numbers for community members to report locomotive complaints by augmenting their national systems to be able to respond to and provide complaint resolution information to complainants. Under the process envisioned by the railroads, each complaint is logged in a central database upon receipt, and generates a complaint report, which is forwarded to the appropriate railroad operations, environmental, or safety management personnel. Management reviews the complaints and based on the type of complaint and need for action, assigns the appropriate local railroad staff to investigate the complaint and correct the problem.

Both railroads are now in the process of implementing these plans. Daily emails are now being automatically generated to environmental staff that is responsible to follow up on the incidents and, in some cases, provide a response back to the individual who reported the complaint. This transition to new system-wide protocols has just begun and will take time to fully implement.

Staff has reviewed the plans from each railroad, and has provided comments as to how the plans can be improved to better meet the goals established in the Agreement. Staff intends to continue to evaluate the railroads existing processes, and develop recommendations on how the system can be more responsive and accountable. This includes the establishment of protocols for better system tracking and recording of the complaint investigation process at the local level, and protocols for notifying individuals

who file a complaint on the findings of the railroads' investigations, including any corrective actions taken.

3. Development of a Statewide Locomotive Complaint Program in Cooperation with Local Air Districts

Staff has been working with local air districts to develop a statewide community reporting program for idling and smoking locomotives. Staff initiated a meeting in September with local air districts to discuss how to design and implement a statewide rail yard complaint process, including how to best utilize the individual Program Coordinators identified by the railroads. Over a dozen local air districts participated.

At that meeting, the consensus of the local air district representatives was that the development of community reporting program for idling and smoking locomotives should be handled through cooperative work with the California Air Pollution Control Officers Association (CAPCOA). Staff will work with CAPCOA in the near future to finalize the development of this program.

E. A RB Enforcement and Training

Consistent with the Agreement, ARB staff began development and implementation of an idling enforcement training program for ARB and local air district enforcement personnel, and coordination with the railroads to provide visible emission training to railroad employees.

As part of the development of the idling and visible emissions enforcement training program, ARB has begun to train staff on the Agreement. This training includes:

- An overview of the Agreement, with a specific focus on the idling, visible emission, and fuel components;
- Information on the California intrastate locomotive fleet, including descriptive and visual information on "typical" intrastate locomotives; and
- Reviewing the railroads' idling reduction and visible emission reduction and repair programs.

In addition to the first phase of internal training, ARB's training and enforcement staff visited eight of the Designated Rail Yards throughout the state to observe current locomotive idle shutdown practices and the prevalence of idle reduction devices in the fleet. As part of the program, ARB enforcement staff are reviewing the training programs developed by UP and BNSF so that they are knowledgeable about the railroads' standard operating procedures regarding locomotive idling and shut-down procedures. Staff anticipates that formal training for the locomotive idling enforcement program will begin by the end of February, and will be offered to ARB staff and interested local air district enforcement staff.

Currently, ARB staff offer a visible emission evaluator program. This three-day course is a basic overview of air pollution, emphasizing visible emissions evaluation. Participants are trained to read visible emissions and will have the opportunity to obtain visible emissions evaluation certification. This certification is valid for six months and recertification must be obtained twice a year. Additional topics include air pollution and its effects, meteorology, water vapor plumes, air pollution law, inspection procedures, and diesel smoke enforcement. ARB training staff has contacted both UP and BNSF regarding this course offering to ensure that the appropriate railroad staff has the required visible emission certifications required in the Agreement. Both railroads have indicated that they intend to enroll employees to participate in this training in late February and early March of 2006.

F. Other Staff Activities to Support the Implementation

This section discusses other staff activities that have been initiated to support ARB's implementation efforts.

1. Meetings with Local Air Districts

Staff has met with staff of all of the local air districts that contain one or more Designated Rail Yards. In these meetings, staff discussed the program elements of the Agreement and solicited air district input on the implementation and community involvement components. Staff has met with the following local air districts:

- Bay Area Air Quality Management District;
- Mojave Desert Air Quality Management District;
- Placer County Air Pollution Control District;
- Sacramento Metropolitan Air Quality Management District;
- San Diego County Air Pollution Control District;
- San Joaquin Valley Unified Air Pollution Control District;
- South Coast Air Quality Management District; and
- Yolo-Solano Air Pollution Control District.

Staff has briefed a number of other air districts at recent meetings of the California Air Pollution Control Officer's Association. Staff has also provided information on the Agreement to the Locomotive and Rail Sector Working Group of the West Coast Collaborative.

2. Designated Rail Yard Visits

Staff visited all but two of the Designated Rail Yards. The purpose of these visits was to observe the overall operations and the relative level of activity at each rail yard, and the proximity of residences and other businesses to the rail yard and nearby arterial highways and freeways. The rail yards visited are provided below in Table 7. As part of this effort, local air district staff were invited to participate in the rail yard visits.

Table 7
Designated Rail Yard Site Visits

Rail Yard	Operator	Date of Visit
Richmond	BNSF	August 4, 2005
Oakland	UP	August 4, 2005
Hobart	BNSF	August 17, 2005
Commerce/Eastern *(including Commerce Mechanical)*	BNSF	August 17, 2005
Commerce	UP	August 17, 2005
LATC	UP	August 18, 2005
Watson	BNSF	August 18, 2005
ICTF/Dolores	UP	August 18, 2005
Industry	UP	August 25, 2005
Mira Loma	UP	August 25, 2005
Colton	UP	August 25, 2005
San Bernardino	BNSF	August 25, 2005
Roseville	UP	December 2, 2005
Stockton	UP	December 16, 2005
Stockton	BNSF	December 16, 2005
Barstow	BNSF	*Planned for February 2006*
San Diego	BNSF	*Planned for February 2006*

3. Development of an ARB Rail Yard Website

On August 1, 2005, staff established a "Rail Yard Emission Reduction" website at: http://www.arb.ca.gov/railyard/railyard.htm. This website is intended to provide information to the public about the ARB's ongoing efforts to reduce the emission impacts of rail yard operations, including staff's activities to implement the Agreement and other related railroad information. Key information provided on the Rail Yard Emission Reduction website includes:

- What's new;
- Upcoming events and meetings;
- How to file a complaint, including contact information for railroads, ARB, and local air districts;
- Information on the Agreement, including a copy of the Agreement, fact sheets, and the October 13, 2005 Staff Report on the Agreement
- Several documents on the Agreement translated into Spanish, including fact sheets and the Executive Summary of the October 13, 2005 Report;
- Copies of the railroads' submittals to comply with the Agreement;
- Information on the DRRP and associated activities;
- Rail yard HRAs;
- Related links; and
- Information on the ARB's locomotive and Goods Movement activities.

G. Review of Air Emissions and Identification of Potential Mitigation

Under the Agreement, the railroads are required for each Designated Rail Yard to: 1) review air emissions, 2) determine if there are feasible changes, prior to the development of health risk assessments, that can be implemented to reduce the impacts of locomotive and associated rail yard equipment emissions, and 3) share both the air emissions and potential mitigation measures information in community meetings at each of the Designated Rail Yards.

1. Review of Designated Rail Yard Emissions

Each railroad submitted air emissions information by November 1, 2005 for each of the Designated Rail Yards. The railroads submittals included information on the types of railroad operations, level of activity, nearby urban populations, estimate of air emissions, and a ranking of rail yards by potential level of diesel PM health risks.

2. Current Efforts to Mitigate Locomotive Diesel PM Emissions

ARB and others have taken a number of actions to address the impacts of locomotive emissions throughout the state. This includes the 1998 Memorandum of Understanding with the railroads to reduce locomotive oxides of nitrogen (NOx) emissions in the South Coast, requirements for the use of cleaner fuel in intrastate locomotives, Carl Moyer funding by some local air districts, and the current Agreement. As a result, the railroads have undertaken a number of steps that will provide significant reductions in the emission impacts of rail yards on local communities. Without the cooperative efforts between the railroads and the ARB, many of these actions would not have occurred.

a) Introduction of Electric Hybrid Locomotives

Since early 2005, UP and BSNF has each operated an electric hybrid locomotive (commonly known as the "Green Goat", manufactured by Railpower) at the Fresno and Los Angeles rail yards. In August 2005, UP announced that it had ordered ten additional Green Goats for use in their southern California rail yards. The first two have been received and have been put into service at the UP rail yard in Mira Loma. The remaining Green Goats are expected to arrive and be put into service in 2006.

Green Goats are electric hybrid switch locomotives that operate primarily through energy provided by over 300 lead acid batteries. A mid-sized diesel fueled engine, typically less than 300 horsepower (hp), runs a generator that maintains the charge for this large battery pack. Staff estimates that the replacement of an existing switcher locomotive with a Green Goats, in combination with other locomotive emission reduction strategies already in place, will provide over a 90 percent reduction in NOx and diesel particulate matter emissions relative to the unit that was replaced.

b) Introduction of Gen-Set Switcher Locomotives

In January 2006, UP held a public event at the Roseville rail yard to present a low emissions gen-set switcher locomotive. Depending on the configuration, a gen-set switcher locomotive can contain up to three United States Environmental Protection Agency (U.S. EPA) certified lower horsepower (hp) (about 700 hp) Tier 2 or 3 nonroad engines which replace a more traditional larger horsepower (about 2000 hp) single engine. Since switcher locomotives typically operate in the lower notch settings, gen-set switcher locomotives are typically able to operate on only one engine. This provides for reduced fuel consumption and emissions. However, as more power is needed, they have the ability to utilize all on-board engines. Like the Green Goat, a gen-set switcher will, in combination with other locomotive emission reduction strategies already in place, provide over a 90 percent reduction in NOx and diesel particulate matter emissions relative to the unit that was replaced. The deployment of significant numbers of these locomotives in California is under consideration and could greatly assist in achieving substantial emission reductions under both the 1998 and 2005 Agreements.

3. Potential Additional Mitigation Measures

As required in the Agreement, the railroads submitted a review of potential additional mitigation measures for each of the Designated Rail Yards by December 31, 2005. Potential mitigation measures identified include:

Operational Measures:

- Discontinued use of certain rail yard areas; and
- Relocate an operation within a rail yard (e.g., gate location for trucks).

Locomotive or Rail Yard Equipment Replacement or Upgrade:

- Purchase dedicated Tier 2 locomotives for the rail yard fleet;
- Retrofit to Tier 2 switch locomotives;
- Purchase ultra low emitting locomotives (e.g., electric hybrid, multi-engine, LNG); and
- Upgrade or replace rail yard equipment.

Idling Reduction:

- Expedited retrofit with idle reduction devices; and
- Manual shutdown of unnecessary idling to limit to less than one hour.

Fuels:

- Expanded or early use CARB diesel and use of specialty fuels.

Emission Control Devices:

- Install exhaust hood/scrubber;
- Retrofit switch locomotives with diesel particulate filters; and
- Retrofit switch locomotives with diesel oxidation catalysts.

4. Community Meetings

Under the Agreement, community meetings were to be held by November 1, 2005 to discuss the air emissions estimates and potential mitigation measures for each of the Designated Rail Yards. Some community members and local air districts expressed a desire to postpone these meetings until the Board had conducted its public review of the Agreement, which did not occur until late October. However, four community meetings have been held and three more are currently scheduled. Staff anticipates that the remaining meetings will be completed by the end of the first quarter of 2006. Table 8 shows the current schedule for the community meetings.

Table 8
Schedule for Community Meetings

Rail Yard	Operator	Date of Meeting
Richmond	BNSF	February 8, 2006 (tentative)
Oakland	UP	February 7, 2006 (tentative)
Hobart	BNSF	October 25, 2005
Commerce/Eastern *(including Commerce Mechanical)*	BNSF	October 25, 2005
Commerce	UP	TBD
LATC	UP	TBD
Watson	BNSF	October 25, 2005
ICTF/Dolores	UP	TBD
Industry	UP	TBD
Mira Loma	UP	TBD
Colton	UP	TBD
San Bernardino	BNSF	TBD
Roseville	UP	January 17, 2006
Stockton	UP	TBD
Stockton	BNSF	TBD
Barstow	BNSF	January 3, 2006
San Diego	BNSF	TBD

TBD: Date to be determined in the future.

H. Diesel Particulate Filters and Oxidation Catalysts

In 2001, staff and the railroads agreed to cooperatively evaluate the feasibility of developing diesel particulate filers (DPFs) or diesel oxidation catalysts (DOCs) for use on a typical locomotive representative of the current California switcher fleet. UP and BNSF indicated they would commit up to $5 million towards this evaluation. Under the Agreement, a detailed description of the evaluation findings to date, as well as an assessment of the current application of this technology to locomotives in Europe, was to be completed. The railroads jointly submitted this information to ARB by December 31, 2005.

Staff is in the process of reviewing the information and findings presented, and intend to include both topics for discussion as part of the biannual technical evaluation meetings provided for in the Agreement.

I. Health Risk Assessments at Designated Yards

Under the Agreement, 16 new health risk assessments (HRA) at the Designated Rail Yards will be completed. The Agreement identifies which rail yards are to be completed first and those that are to be completed within an additional year. Set dates for the draft assessments are not specified in the Agreement, however, the ARB and the participating railroads have agreed to a schedule that will produce draft risk

assessments within 18 months and 30 months, respectively, from the date the Agreement was signed.

The HRAs will consider emissions of toxic air contaminants (TACs) and criteria pollutants from emission sources at each Designated Rail Yard including resident and transient locomotives, on- and off-road equipment, and stationary equipment, and will identify the associated health risk from on-site activities. In addition, staff will provide additional information on the risk from nearby off-site sources. In performing the HRAs, the railroads will collect and submit air emissions, meteorological, demographic, and air dispersion modeling data to ARB. Staff will complete the HRAs based on the data developed for each Designated Rail Yard.

This section provides information on staff's and the railroads' implementation of the health risk assessment activities for designated yards program element of the Agreement.

1. Health Risk Assessment Guidance

The HRAs will estimate potential cancer and non-cancer risks to the public from exposure to airborne contaminants inventoried from the Designated Rail Yards. To ensure that the consistent data and methodologies are used, staff is developing draft statewide guidelines for rail yard HRAs. These guidelines will be released for public comment. The guidelines will help ensure that the emission inventory development and air dispersion modeling performed for each rail yard meet the requirements in the Agreement. The rail yard health risk assessments will be consistent with the Air Toxic Hot Spots Program Risk Assessment Guidelines (Risk Assessment Guidelines) published by Office of Environmental Health Hazard Assessment (OEHHA), and be consistent with the 2004 Roseville Rail Yard Study performed by staff.

2. Health Risk Assessment Study Plans

Both railroads submitted a proposed study plan (Plan) providing an outline and timeline of the necessary components and data to be submitted to ARB in order that a HRA may be completed for each Designated Rail Yard by October 1, 2005. Upon ARB finalization of the HRA Guidelines, the railroads will update their Plans to be consistent with the guideline provisions and submit them to ARB for approval.

3. Schedule for Development of Health Risk Assessments

As mentioned above, ARB and the participating railroads have agreed that the draft risk assessments will be completed and available to the public within 18 months, or 30 months, respectively, from the date the Agreement was signed. Table 9 identifies the tentative schedule for completion of the HRA's at the 16 Designated Rail Yards.

Table 9
Tentative Schedule for Completing HRAs

Draft HRA to be Completed by *December 31, 2006*		Draft HRA to be Completed by *December 31, 2007*	
Rail Yard	**Company**	**Rail Yard**	**Company**
Commerce	UP	Barstow	BNSF
Hobart	BNSF	Industry	UP
Commerce/Eastern	BNSF	Colton	UP
Watson	BNSF	Dolores/ICTF	UP
LATC	UP	Oakland	UP
Mira Loma	UP	San Bernardino	BNSF
Richmond	BNSF	San Diego	BNSF
Stockton	UP		
Stockton	BNSF		

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ATTACHMENT

THE ARB/RAILROAD STATEWIDE AGREEMENT CLARIFICATION OF THE RELEASE CLAUSE AND THE EFFECT OF THE AGREEMENT ON STATE AND LOCAL AUTHORITY

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THE ARB/RAILROAD STATEWIDE AGREEMENT – CLARIFICATION OF THE RELEASE CLAUSE AND THE EFFECT OF THE AGREEMENT ON STATE AND LOCAL AUTHORITY

PART 1

Purpose of this Document:

Since the signing of the voluntary June 24, 2005 Statewide Agreement between the Air Resources Board, BNSF Railway Company and the Union Pacific Railroad Company, several parties who are not signatories to the Agreement have expressed concern about the meaning of the release clause contained in program element 11(c). Concerns were also raised about the impact of the Agreement on the exercise of preexisting authority. The purpose of this document is to provide additional clarification regarding the intent of the signatories as to how the release clause operates and when the release clause may be triggered, and how the Agreement affects the use of preexisting authority.

The Release Clause is Discretionary:

The release clause is discretionary in every case. It is not triggered automatically. Instead, the participating railroads have reserved the option to cease performing certain obligations under the Statewide Agreement – on an element by element basis after consultation with the ARB – if another state or local entity adopts or attempts to enforce similar actions.

Timing of the Release Clause:

The release clause may be triggered on the date that duplicative or overlapping requirements are adopted or enforced, not when such requirements are merely proposed or pending.

PART 2

General Savings Clause for State and Local Authority:

Nothing in the Statewide Agreement affects the scope of the ARB's or any other state or local agency's regulatory authority regarding railroad activities, or California's ability to enact laws regarding railroad activities. Such actions may trigger the optional release clause as described in Part 3 below but are not prohibited by the Statewide Agreement. Such actions may, however, be preempted or otherwise prohibited by federal law.

General Savings Clause for Federal Preemption:

Nothing in the Statewide Agreement affects the ability of the participating railroads, based on a claim of federal preemption or other legal doctrine, to challenge the authority of state or local agencies to adopt, enact, implement or enforce measures, including permit conditions, applicable to railroad equipment or activities. This includes permit or other conditions resulting from a railroad's voluntary participation in permitting or administrative processes. The governmental actions described in Part 4 below may not trigger the optional release clause, but the Statewide Agreement does not limit the ability of the participating railroads to challenge such actions in other ways.

General Savings Clause for Other Voluntary Agreements:

Nothing in the Statewide Agreement modifies or terminates previous agreements reached between one or more of the participating railroads and local air pollution control districts or other entities. Similarly, nothing in the Statewide Agreement prevents or inhibits the ability of a participating railroad from entering into new, voluntary agreements with any party.

PART 3

Types of Events that Would Allow a Participating Railroad to Trigger the Release Clause:

- If ARB adopts a new or modified regulation, or uses another mechanism, to enforce or impose requirements that duplicate or overlap with a specific program element;

- If a local air district or local government entity adopts a new or modified regulation or ordinance, or uses another mechanism, to enforce or impose requirements that duplicate or overlap with a specific program element;

- If U.S. EPA adopts or attempts to enforce more stringent requirements than a specific program element.

- If the State Legislature enacts and the Governor signs a self-implementing statute that imposes new requirements that duplicate or overlap with a specific program element.

Discussion:

If after the effective date of the Statewide Agreement, ARB adopts a new or amended regulation, or uses another mechanism, to unilaterally enforce or impose a requirement on the participating railroads that duplicates or overlaps with an express goal of a program element, the participating railroads are not required to comply with both that requirement and the requirements of that program element. Rather than be subject to two different programs, the participating railroads have the option to invoke the release clause and be released from their obligations under the affected program element. By the same token, if an air district or local government body adopts a regulation, ordinance, or uses another mechanism, to unilaterally enforce or impose requirements that duplicate or overlap the provisions of one or more of the goals of a program element, the participating railroads may elect to invoke the release clause with respect to that program element.

Examples of requirements post-dating the Agreement that could trigger the release clause would be laws, rules, ordinances, or other mechanisms to unilaterally (a) limit or require reporting of locomotive idling or require installation of idling reduction devices – which are aimed at the same goal as program element #1 (Locomotive Idling Reduction Program), or (b) set special fuel-related requirements for locomotives – which are aimed at the same goal as program element #2 (Early Introduction of Lower Diesel in Locomotives), or (c) require a railroad to conduct its own visible emissions and repair program – which are aimed at the same goal as program element #3 (Visible Emissions Reduction and Repair Program).

In accordance with the Statewide Agreement, the participating railroads may also trigger the release clause with respect to a particular program element if the U.S. Environmental Protection Agency adopts or attempts to enforce more stringent requirements that duplicate or overlap with the provisions of one or more goals of the program element.

The participating railroads may also trigger the release clause with respect to a program element when a new California law is enacted that is self-executing and imposes requirements on the participating railroads that duplicate or overlap with an expressed goal of the program element. A participating railroad would not be able to trigger the release clause based on a new statute that is not self-executing until the state or local agency authorized by the legislation adopts or attempts to enforce new requirements that duplicate or overlap with the provisions of one or more goals of a program element.

PART 4

Types of Events That Would Not Allow a Participating Railroad to Trigger the Release Clause:

- Enforcement actions taken by ARB or local agencies under pre-existing authority;
- If one or more the participating railroads has entered into a pre-existing voluntary agreement or enters into new, voluntary agreements with any party.
- If one or more of the participating railroads agrees to permit conditions or other mitigation requirements in exchange for obtaining discretionary approval to operate a new or modified rail yard facility.

Discussion:

The Statewide Agreement does not allow a participating railroad to trigger the release clause because of ARB or local agencies taking enforcement action under preexisting state laws (e.g., Health and Safety Code sections 41700 and 41701), or preexisting state or local regulations. This also applies to enforcement of voluntary agreements between the participating railroads and governmental bodies. For example, ARB may, without triggering the release clause, enforce its preexisting diesel fuel regulations or enforce provisions of the 1998 Memorandum of Mutual Understandings and Agreements, South Coast Locomotive Fleet Average Emissions Program. Similarly, the release clause would not be triggered by an air district issuing violations under authority provided by preexisting state law related to opacity due to locomotive or other rail-related emissions. Such actions may, however, be preempted or otherwise prohibited by federal law.

Nothing in the Statewide Agreement prevents a participating railroad from entering into other voluntary agreements with local governmental bodies, air districts, or ARB, and under such voluntary agreements a participating railroad may not trigger the release clause. A participating railroad seeking discretionary governmental approval in compliance with the California Environmental Quality Act (CEQA), California land use law, or other California or local laws, has full discretion to determine which conditions and mitigation actions it is willing to accept in order to receive the discretionary governmental approval. A participating railroad's voluntary agreement in this context to conditions or mitigation measures that duplicate or overlap an expressed goal of a program element would not allow it to trigger the release clause. To the extent that such conditions or mitigation measures for a project would provide equivalent or greater benefits project than a comparable provision in the Statewide Agreement, ARB may agree to accept the conditions or mitigation measures as a substitute for the participating railroad's obligations under the comparable provision.