

State of California
AIR RESOURCES BOARD

Resolution 09-40

May 28, 2009

Agenda Item No: 09-5-6

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (ARB or Board) to adopt standards, rules, and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, section 39003 of the Health and Safety Code charges the Board with coordinating efforts to attain and maintain ambient air quality standards, to conduct research into the causes of and solution to air pollution, and to systematically attack the serious problem caused by motor vehicles, which is the major source of air pollution in many areas of the State;

WHEREAS, sections 39666 and 39667 of the Health and Safety Code authorize the Board to adopt regulations and measures to reduce emissions of toxic air contaminants from vehicular and non-vehicular sources;

WHEREAS, sections 43013 and 43018 of the Health and Safety Code direct the Board to achieve the maximum degree of emission reduction possible from vehicular and other mobile sources, including marine vessels to the extent permitted by federal law, to attain state air quality standards by the earliest practicable date;

WHEREAS, chapter 3.2 commencing with section 39625 of the Health and Safety Code established the Goods Movement Emission Reduction Program (Program) to implement the Highway Safety, Traffic Reduction, Air Quality and Port Security Bond Act of 2006, also known as Proposition 1B, which authorizes one billion dollars (\$1,000,000,000) in bond-funded incentives for ARB to reduce emissions associated with the movement of freight along California's trade corridors;

WHEREAS, section 39625.5(b)(1) of the Health and Safety Code requires the Board to allocate funds to local agencies in a manner that gives priority to emission reduction projects that achieve the earliest possible reduction of health risk in communities with the highest health risks from goods movement facilities;

WHEREAS, section 39626.5(b) of the Health and Safety Code requires the local agencies receiving grants from ARB to award contracts and liquidate funds within set timeframes or the funds revert back to the legislatively-controlled California Ports Infrastructure, Security, and Air Quality Improvement Account;

WHEREAS, on February 28, 2008, in Resolution 08-12, the Board adopted Program Guidelines for Implementation, including overall funding targets, priorities for the use of

Fiscal Year (FY) 2007-08 funds, project specifications, and project implementation deadlines;

WHEREAS, in Resolution 08-12 the Board also delegated authority to the Executive Officer, or his or her designee, to make interim changes to the Program Guidelines, to bring those changes back to the Board with the next comprehensive update to the Program Guidelines, and to sign all Program grant agreements and any other agreements necessary to implement the Program, except that this delegation does not apply to any memoranda of understanding or similar agreements subject to Board approval pursuant to Resolution 05-40 (adopted July 21, 2005);

WHEREAS, in Resolution 08-12, and Resolution 08-6 adopted on May 22, 2008, the Board approved a list of primary local agency projects and corresponding Program funding amounts, and directed the Executive Officer, or his or her designee, to enter into grant agreements with those local agencies and to take any other action the Executive Officer deemed necessary to implement those projects;

WHEREAS, in Resolution 08-6 the Board also adopted a list of backup projects, established funding priorities for backup projects, and delegated authority to the Executive Officer to select projects to be funded from the backup list and to enter into grant agreements with the local agencies;

WHEREAS, in Resolution 08-6 the Board specifically approved the South Coast Air Quality Management District's application to administer a program for trucks serving ports and intermodal rail yards as a priority backup project for the Ports of Los Angeles and Long Beach in case the ports are unable to fully expend their awarded funds;

WHEREAS, Resolution 08-6 describes a process for local agencies to document, and the Executive Officer to approve, the transfer of truck funds from retrofit projects to replacement projects in case of low demand for retrofits;

WHEREAS, ARB staff executed twenty-one grant agreements for the primary local agency projects in June 2008, consistent with Resolutions 08-6 and 08-12;

WHEREAS, the local agencies began project implementation consistent with executed grant agreements and Program Guidelines by soliciting and evaluating equipment project applications, developing competitively ranked lists, and executing contracts with individual equipment owners;

WHEREAS, the California Department of Finance issued Budget Letter 08-33 on December 18, 2008, directing all State entities implementing General Obligation bond programs (including Proposition 1B) to cease authorizing any new grants or obligations for bond projects, to suspend all projects, and to instruct all grant recipients not to enter into any new agreements or contracts that would be funded from bond monies;

WHEREAS, in a letter dated December 23, 2008, the Executive Officer instructed local agencies implementing Program grant agreements to suspend entering into any new

equipment project contracts or expending funds for existing contracts because ARB is not authorized to approve payments until such time as ARB has access to bond funds;

WHEREAS, ARB received a first installment of \$20 million in bond funding in April 2009 as reimbursement for prior expenditures to local agencies and a second installment of \$90 million in May 2009 to restart a subset of suspended local agency projects, providing \$110 million out of the total \$250 million in FY2007-08 funds;

WHEREAS, the delay in availability of bond funds has prevented local agencies from moving forward with timely Program implementation to meet the deadlines identified in their grant agreements, and there is uncertainty about when the rest of the FY2007-08 funds will be available to complete all of the projects;

WHEREAS, some local agencies have requested changes to their projects, including transfer of funds to backup projects, and ARB staff anticipates a need for other modifications to ensure that all of the FY 2007-08 funds can be spent within the statutory deadlines to quickly reduce the health risk from goods movement in impacted communities;

WHEREAS, all of the local agencies that solicited applications for truck retrofit projects found the demand for such projects was lower than expected, while the demand for truck replacements remains high, creating a need for multiple agencies to receive authorization from ARB to transfer funds within existing truck grants from retrofit to replacement projects;

WHEREAS, the Board adopted the Statewide Truck and Bus Rule in December 2008, which establishes compliance dates for truck upgrades and affects how far in advance or how "early" any Program-funded upgrades can be completed;

WHEREAS, on May 14, 2009, ARB staff published a meeting notice that described the changes needed to the Program Guidelines, funding awards, and existing grant agreements to support effective Program implementation; and

WHEREAS, in consideration of the meeting notice, staff presentation, and public testimony, the Board finds that:

1. Limited provisions of the Program Guidelines and the grant agreements should be modified to address uncertainty in the availability of bond funding, as well as recent regulatory actions, that impact the feasible timelines for implementing projects;
2. Funding for project types with low demand at this time should be transferred to approved backup projects with high demand that can be quickly implemented to avoid reversion of funds;
3. The administrative procedures to transfer unexpended truck retrofit funds to truck replacement projects should be streamlined to support faster implementation; and

4. The Executive Officer needs broader authority to respond to both extraordinary circumstances (such as fiscal crises) and practical issues that arise during Program implementation to ensure that the goals of the Program are achieved.

NOW, THEREFORE, BE IT RESOLVED that the Board adopts the changes to the Program Guidelines described in Attachment A for implementation of local agency projects awarded FY2007-08 funds.

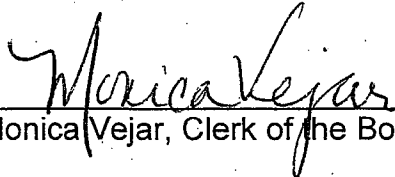
BE IT FURTHER RESOLVED that the Board supports transferring the existing award of FY2007-08 funds from harbor craft projects to backup port truck projects in the Bay Area Air Quality Management District. Consistent with the Board's funding priorities in Resolution 08-6, the Board also delegates to the Executive Officer, or his or her designee, the authority to implement additional transfers to backup projects including, but not limited to, those described in Attachment A, if the Executive Officer deems it necessary to retain funding to meet the goals of the Program.

BE IT FURTHER RESOLVED that the Board affirms the authority previously delegated to the Executive Officer to select the backup project administered by the South Coast Air Quality Management District for port trucks if the Port of Los Angeles and the Port of Long Beach are unable to fully expend their awarded funds, if needed to ensure that the funds are used expeditiously and are made available to all truck owners qualifying under the Program Guidelines, without penalties imposed by the ports.

BE IT FURTHER RESOLVED that the Board supports action by the Executive Officer, or his or her designee, to implement and amend grant agreements for FY2007-08 funds, as described in Attachment A.

BE IT FURTHER RESOLVED that the Board affirms the existing authority of the Executive Officer to interpret or clarify the Program Guidelines, and delegates to the Executive Officer, or his or her designee, the authority to adopt changes to the Program Guidelines that he or she deems necessary to enable effective implementation of the Program, provided that such changes are consistent with statute and the goals established by the Board. Staff shall identify those changes when the Board considers the next comprehensive update to the Program Guidelines.

I hereby certify that the above is a true and correct copy of Resolution 09-40, as adopted by the Air Resources Board.



Monica Vejar, Clerk of the Board

ATTACHMENT A
PROPOSITION 1B: GOODS MOVEMENT EMISSION REDUCTION PROGRAM
CHANGES FOR FISCAL YEAR 2007-08 FUNDS

**Amendments to Program Guidelines, Transfer of Funds to Backup Projects,
and Other Changes to Existing Grant Agreements**

The changes in this attachment are discussed in more detail in the May 14, 2009 "Notice of Public Meeting to Consider an Update on Existing Grant Agreements for the Proposition 1B: Goods Movement Emission Reduction Program and the Lower-Emission School Bus Program," available at <http://www.arb.ca.gov/gmbond>.

Amendments to Program Guidelines

The Proposition 1B: Goods Movement Emission Reduction Program Final Guidelines for Implementation are amended to incorporate the changes listed below. As applicable, these changes shall also be reflected in revisions to existing grant agreements with local agencies.

- a. Tie ARB's Funding Obligation to the Availability of Bond Monies. ARB's obligation to disburse funding is dependent on securing state funds. ARB shall notify local agencies in writing with authorization to restart projects up to specified funding amounts. Local agencies may not proceed with the signing of new contracts or implementation of existing contracts without ARB's written authorization to restart their grant agreements.
- b. Extend the Timelines for Local Agency Action. ARB shall, in consultation with the local agency, extend the deadlines for local agencies to sign contracts with equipment owners and to liquidate funds for completed projects. These extensions will typically cover the amount of time bond funding was suspended for that project, plus a short restart period. No extension may exceed the maximum time allowed by statute for local agency action.
- c. Expand the Executive Officer's Authority. The Executive Officer, or his or her designee, has the authority to make changes to the Program Guidelines to enable effective implementation of the Program, provided that such changes are consistent with the statute and the goals established by the Board. ARB staff shall identify those changes when the Board considers the next comprehensive update to the Program Guidelines. ARB staff shall interpret or clarify the Program Guidelines as needed.
- d. Reduce the Early Period for Port Truck Retrofits. The equipment project specifications for trucks serving ports and intermodal rail yards in Appendix A of the Program Guidelines shall require Program-funded diesel particulate matter filters to be installed and operational by December 31, 2009.

- e. Reduce the Early Period for Model Year 1998 and 1999 Other Truck Replacements. The equipment project specifications for other trucks in Appendix B of the Program Guidelines shall require Program-funded repower and replacement projects for model year 1998 and 1999 projects to be completed and operational at least 2 years prior to a regulatory requirement for that level of emissions control under the best available control technology provisions of any adopted rule for in-use trucks.
- f. Shorten Contract Term for Truck Projects. The equipment project specifications for trucks serving ports and intermodal rail yards in Appendix A, and for other trucks in Appendix B, of the Program Guidelines shall require the equipment owner to commit to 100% California-only operation and California base-plated registration for at least 5 years or 500,000 miles on truck repower and replacement projects, or at least 2 years for truck retrofit projects. Appendix A shall also require the equipment owner to commit to frequent port or intermodal rail yard service (150+ visits per year) for at least 4 years for repowers and replacements, or at least 2 years for retrofits.

Transfer of Funds to Backup Projects

Funding awarded to primary local agency projects may be transferred to approved backup projects as described below.

- g. Transfer Bay Area Harbor Craft Funds to Port Trucks. Consistent with the request submitted by the Bay Area Air Quality Management District, ARB shall terminate its existing grant agreement G07GMBH1 for harbor craft projects in the amount of \$4,263,844 and transfer the funds to this District's existing grant agreement G07GMBP1 for trucks serving ports and intermodal rail yards. This District shall be entitled to use 5% of the additional funds for administration of the truck grant, less the initial administration monies previously received by this District for harbor craft.
- h. Ability to Transfer Administration of Grant Agreement for Trucks Serving the Ports of Los Angeles and Long Beach. The Board affirms the existing authority of the Executive Officer, or his or her designee, to assign a portion of unused Program funds from grant agreement G07GMLP3 with the Port of Los Angeles and the Port of Long Beach for port trucks in the amount of \$98,000,000 to the approved backup project administered by the South Coast Air Quality Management District, if needed to ensure that the funds are used expeditiously and are made available to all truck owners qualifying under the Program Guidelines.

The primary constraint on demand for these funds was created by the structure of the gate fees adopted by the ports themselves. Unless each port amends its gate fee structure by July 2009 to eliminate the fee on clean trucks (regardless of fuel type) that receive only State bond funds, the ports administer the joint program in full conformance with the Program Guidelines, and the ports demonstrate adequate demand for Program funds, ARB staff will reassign administrative responsibility and control of the remaining funds to the South Coast District to carry out the project.

- i. Ability to Transfer San Diego Shore Power Funds to Other Projects. If the Port of San Diego is not able to secure a participant shipping terminal(s) for its shore power project under grant agreement G07GMSS1 in the amount of \$2,500,000 by July 2009, ARB staff may terminate that grant agreement and transfer the funds to approved backup projects according to the following priorities:
1. Provide additional funding to the San Diego Air Pollution Control District under its existing grant agreement G07GMSP2 for port trucks, if there is a demonstrated demand and the funds could be quickly utilized in the San Diego/Border trade corridor.
 2. Provide additional funding to the San Diego District under its existing grant agreement G07GMST2 for other trucks and/or the Imperial County Air Pollution Control District under its existing grant agreement G07GMST3 for other trucks, if there is a demonstrated demand and the funds could be quickly utilized in the San Diego/Border trade corridor.
 3. Provide additional funding to a local agency or local agencies for approved backup projects in other trade corridors to ensure the funds can be utilized within the statutory timeframes.

Other Changes to Existing Grant Agreements

- j. Streamline Process to Transfer Funds from Truck Retrofits to Replacements. ARB shall allow local agencies with truck grant agreements to shift unexpended retrofit funds to replacement projects, eliminating the requirement for written approval from the Executive Officer. Consistent with the grant agreements, local agencies still need to document a good faith effort to solicit retrofit projects and fund all eligible retrofit projects. Any remaining funds can then be applied to replacement projects, according to the competitively ranked list. Each affected local agency shall retain documentation for audit purposes showing the good faith solicitation effort, as well as the retrofit applications received, evaluated, and funded according to the competitively ranked list.
- k. Truck Travel in San Diego/Border Corridor. ARB shall modify the existing grant agreement G07GMST2 with the San Diego District to allow this District to require that existing trucks travel at least 10% of their annual miles in the San Diego/Border trade corridor to be eligible for funding, a defined project alternative that is permitted under the current Program Guidelines.