

THE CALIFORNIA RAILROAD INDUSTRY

June 23, 2010

Mary Nichols
Chair
California Air Resources Board
1001 "I" Street
Sacramento, CA 95812

RE: Freight Railroad Comments on item 10-6-5: Proposed Commitments Between ARB and Union Pacific Railroad and BNSF Railway to Further Reduce Diesel Particulate Matter Emissions at Four High Priority Railyards

On behalf of the BNSF Railway and Union Pacific Railroad Company (the Railroads), the California Rail Industry is pleased to have the opportunity to provide comments and context to the ARB prior to its consideration of the Commitments for high priority yards (Commitments).

The Railroads and the ARB have had a successful partnership over the past twelve years developing and implementing effective strategies to reduce emissions from locomotives and from rail operations through voluntary and enforceable agreements. During this period, the ARB has consistently determined that the Railroads have met or exceeded all substantive requirements of the 1998 MOU and other past agreements, as verified by the ARB.

The 1998 South Coast Locomotive MOU is one of the most aggressive programs for turning over a fleet of mobile sources anywhere. The Railroads are proud of our past accomplishments to do our fair share to reduce emissions from locomotives and rail operations.

Background

The California Health and Safety Code designates ARB as the air pollution control agency “for all purposes set forth in federal law” (H&S Code § 39602). ARB has primary authority under California law to carry out the state’s mobile source programs. For more than forty years, ARB has adopted stringent emission standards applying to on-road and off-road vehicles under approved EPA waivers/authorizations of preemption.

ARB has also adopted an extensive program to reduce DPM emissions for mobile sources of all kinds. ARB adopted a landmark Diesel Risk Reduction Plan to reduce toxic emissions from diesel sources throughout the State. That Plan recommended many control measures to reduce the risks associated with diesel particulate matter (DPM) and achieve a goal of 75% DPM reduction by 2010 and 85% by 2020. See <http://www.arb.ca.gov/diesel/documents/rrpapp.htm>

By approving the new Commitments, ARB will take the historic and unprecedented step of reducing DPM emissions by 85% by 2020 from 2005 levels from the four railyards in California. They build on ARB’s extensive work to reduce diesel emissions from a wide variety of sources. ARB’s regulations, the prior railroad MOUs, and these new Commitments are one coordinated and consistent program to achieve the goals of the ARB’s statewide Diesel Risk Reduction Plan.

■ BNSF Railway Company
■ Union Pacific Railroad Company

The current Commitments have been designed to reduce DPM emissions at certain railyards, which do not interfere with the Railroads' operating a national locomotive fleet that travel between California and other states daily, currently moving more than 40% of the total intercity revenue ton-miles of freight in the United States.

Activities Currently Underway

In addition to the implementation of the 1998 and 2005 MOUs, the Railroads have already implemented several innovative initiatives in California to reduce DPM emissions. A few examples include:

- Since 2005, the Railroads have put into service about 151 Ultra Low Emitting Locomotives (ULELs), mostly in Southern California. About half of these engines operate predominately in the railyards.
- The Railroads have either moved the location of and/or automated the operation of truck gates at certain yards in order to move emission sources further away from residents or to minimize truck queuing times and its attendant emissions.
- Both Railroads have partnered with locomotive manufacturers and other equipment vendors to demonstrate emerging technologies that have the promise to greatly reduce DPM emissions if proven to be sufficiently durable and reliable for rail operations. There are about a dozen such demonstration programs currently underway with direct Railroad assistance and many are supported by the ARB, as well.

A Delicate Balance

The U.S. Congress has recognized the importance of interstate rail transportation for many years¹ and that railroads need consistent and uniform regulation and treatment to operate effectively. The ARB has long acknowledged that the railroads are federally regulated and that aspects of state and local authority to regulate railroads are preempted. The courts have determined that broad federal preemption exists to ensure consistent and uniform regulation.

Federal agencies have adopted major, broad railroad and locomotive regulatory programs under controlling federal legislation. For example, a typical line-haul locomotive is not confined to a single air basin and travels throughout California and into different states; therefore, inconsistent regulation by multiple agencies would impact the Railroad's essential operations and interstate commerce.

The Railroads did not waive federal preemption by negotiating, entering into, and implementing the 1998 MOU, 2005 MOU, or the new Commitments. The Railroads are also not setting any precedent as to preemption, reservation of rights, or voluntary compliance with other commitments, rules, or agreements.

¹ The Federal Clean Air Act, the Federal Railroad Safety Act, the Federal Interstate Commerce Commission Termination Act and many other laws establish a uniform federal system of equipment and operational requirements.

Exclusive Jurisdiction of the ARB

Only ARB has the resources, knowledge, and expertise to develop, and jurisdictional delegation to monitor and implement the Commitments. A uniform ARB approach ensures that emissions from these railyards are reduced. At the same time, exclusive ARB management of the Commitments affords the railroads a consistent and effective way to address DPM emissions at these railyards in coordination with the prior MOUs, ARB regulation of rail yard-related equipment, and the other railroad-related parts of ARB's statewide Diesel Risk Reduction Plan.

As with prior MOUs, in order to properly maintain essential operations and functions, the Railroads cannot be required to comply with multiple agreements, regulations, statutes, or other requirements that are substantially similar to the Commitments. If other agencies or political subdivisions of California propose to adopt requirements similar to the Commitments, the Railroads will consult with ARB. The Railroads will provide 30 days notice to ARB before deciding whether to withdraw from the Commitments as a result of another agency or political subdivision of California adopting requirements that are substantially similar to the Commitments.

Thank you for the opportunity to provide the ARB comments on this matter in advance of your Board's consideration of this matter. Representatives of the California Rail Industry will be in attendance at your meeting to provide further context and to answer any questions you might have.

Sincerely,



Kirk Marckwald
Principal, California Environmental Associates
On behalf of the California Railroad Industry

cc:

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