



The Port of Long Beach

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March 28, 2003

Zorik Pirveysian
South Coast Air Quality Management District
21865 East Copley Drive
Diamond Bar, California 91765

Subject: Comments on the 2003 Air Quality Management Plan

Dear Mr. Pirveysian:

The Port of Long Beach (Port) appreciates the opportunity to comment on the Draft 2003 Air Quality Management Plan (AQMP). We look forward to working with you and your staff to ensure that the final version is based upon the best applicable data and analytical techniques and that the measures ultimately proposed represent the best possible combination of feasibility and cost-effectiveness. I am confident that, by working together, the port industry, the South Coast Air Quality Management District (District), California Air Resources Board (CARB), and the United States Environmental Protection Agency (EPA) can achieve significant reductions in port-related emissions.

26-1

As presently written, the draft AQMP does raise some concerns regarding the proposed mobile source control measures. On the whole, the proposed measures lack meaningful detail, raise serious jurisdictional and regulatory authority questions, and do not begin to reflect the complexity of issues associated with the targeted sources. For example, many of those sources are within the sole jurisdiction of the CARB or the EPA, while the regulation of other sources may require new legislation prior to implementation. The lack of detail appears to reflect the haste with which the measures were prepared, as demonstrated by the fact that only one of the three mobile source measures in the current draft was included in the Preliminary Draft. While this may be suitable as a basis for discussion, it is premature to include these measures in a document that will become federally enforceable and that through future litigation may force the District to adopt infeasible rules. Below we discuss the three mobile source measures that cause the most concern to the Port.

26-2

Mitigation Fee Program For Federal Sources

This measure proposes the creation of a mitigation fee program with funding from EPA or federal sources, to be used to achieve equivalent emission reductions from non-EPA and federal sources. The Port has three major concerns regarding this proposal. First, the measure is vague and undefined: the source emissions and control costs are undefined and no effort is made to define the nature of either the fee program or the mitigation programs other than to indicate they may function similar to other existing



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District programs. It is inappropriate that such a vague measure be included in what will become part of the state's federally enforceable SIP. Second, the District, as it clearly states in the proposed measure, has no authority over federal sources. As a result, the measure amounts to a de facto emission reduction assignment to EPA, which would have to implement enabling regulations. EPA, however, has repeatedly stated that it will reject any federal assignment. Third, existing international treaties governing foreign-flagged ships may pre-empt EPA from promulgating regulations that assess emission fees to such ships (as has been recently demonstrated by EPA's final rule governing Category 3 marine diesel engines, which only targets U.S.-flagged ships). As a result, U.S. flagged ships, which now only make up a tiny fraction of the vessels calling at the San Pedro Bay ports, would face yet another competitive disadvantage. While we appreciate the problem the District faces, given the magnitude of federal sources, we caution the District against trying to tackle problems with patently infeasible measures.

26-3

Further Emission Reductions From In-Use Off-Road Vehicles and Equipment

This measure proposes the regulation of off-road vehicles within the South Coast Air Basin. While the Port supports thoughtful regulations to reduce emissions from in-use vehicles, for several reasons we oppose such a regulation at the District level. As the measure points out, the CARB is proposing several similar rules in their portion of the SIP but fears that such rules may be inadequate to achieve the necessary emission reductions in the South Coast. We ask that instead of promulgating its own measures, the District work with CARB to prepare state-wide rules that achieve the necessary reductions. Many marine facilities throughout the Port of Long Beach relocate equipment, as cargo handling needs change, from other facilities throughout the state, most notably the San Francisco/Oakland area. Conflicting fleet rules within the state would prevent facilities from using their equipment in the most economical way possible and would create a regulatory island for off-road equipment in the South Coast Air Basin.

26-4

Emission Fee Program For Port-Related Mobile Sources

This measure proposes to establish a fee mitigation program for port-related mobile sources and to use the resulting funds to achieve emission reductions from in-use vehicles and engines. Once again, this measure is vague and undefined with undetermined source emissions and control costs. Perhaps most troubling is that this proposed measure targets sources that would also be subject to the Mitigation Fee Program For Federal Sources and the Further Emission Reductions From In-Use Off-Road Vehicles and Equipment measures, thus violating a guiding principle in the development of the AQMP: that equitable levels of pollution control are established across sources. There is no basis for the District to regulate port-related off-road equipment, which would be subject to both this proposed measure and Further Emission Reductions From In-Use Off-Road Vehicles and Equipment, differently from the

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basin-wide off-road equipment, which would only be subject to the latter measure. Likewise, ships and locomotives are being subject to assessment both under this proposed measure and the Mitigation Fee Program For Federal Sources measure while aircraft would only be subject to the latter.

In addition, there are several jurisdictional problems for the proposed measure. While the District may have the authority to assess fees from areawide and indirect sources, this measure targets mobile sources over which the CARB and EPA have jurisdiction. Specifically, marine vessels and locomotives are federal sources over which the District does not have regulatory authority. There may also be complicating jurisdictional issues with on-road trucking since much of Port trucking is involved in interstate commerce, which would potentially invoke federal pre-emption. The rule also, most importantly, does not acknowledge the nature of trucking in the Port area, where most on-road trucks are operated by independent owner-operators. As a result, there are no fleets, per se, to regulate.

On a broader basis, the Port is also concerned about the fundamental nature of emission fee programs that target the port industry. As you know, air quality is an important issue with the local community and politicians. A proposal to generate fees in order to reduce the emissions of sources outside the port area cannot address local air quality needs. Also such proposals, ignore the efforts the Port has made in the area of air quality. The Port has a long history of working with the District, the CARB, and the EPA on such issues as the Vessel Speed Reduction Program and the terminal equipment retrofit program currently underway in the Port. Finally, we encourage the District to continue its ongoing coordination with the Southern California Association of Governments (SCAG) and use the most recent data available in developing the AQMP since the Port provides the SCAG with the forecasted growth for the port industry.

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The Port would also like to take this opportunity to discuss the CARB's proposed MARINE-3 measure contained in Appendix IV-B of the AQMP. The Port is concerned that this measure is based on potentially infeasible operational changes in the port industry, while at the same time claiming potentially unachievable emission reductions, as much as 17.6 tons per day of NOx reductions by 2010. The feasibility of cleaner fuels is questionable given the international nature of shipping and ship design. It is our understanding the current ship designs are moving to mono-tank design that would preclude a ship from carrying multiple fuels. Also proposed under this measure is cold-ironing. However, the feasibility of vessels using shore-side power in San Pedro Bay is still very uncertain and may only be applicable in a limited number of instances. It may be necessary for the CARB to meet with shipping lines to clarify these issues prior to pursuing this measure. For these reasons, we request the CARB review and revise

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(cont.) proposed measure MARINE-3, in order to ensure it includes achievable emission reductions based on the best available information.

26-6 As a result of these issues and the fact that emission reduction goals have not been assigned to any of these measures, we request that the District remove the proposed measures from the 2003 AQMP and take the time to develop proposals that can achieve measurable emission reductions and that reflect the complex and unique nature of this industry. To further that goal, we propose working together with the District and the CARB to identify opportunities to reduce port-related emissions. As you know, the Port of Long Beach has adopted an Air Quality Improvement Plan that targets all port-related emissions. That Plan can serve as the basis for the Port and the District to work cooperatively to target emission sources that are otherwise beyond the jurisdictional reach of the District. We believe that by working together to tackle these difficult-to-control sources we can achieve far more than through the proposals laid out in the Draft 2003 AQMP.

Sincerely,



Robert Kanter, Ph.D.
Director of Planning

TAJ:s

cc: Catherine Witherspoon, California Air Resources Board
Sylvia Oey, California Air Resources Board
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