

State of California
AIR RESOURCES BOARD

Resolution 10-45

December 17, 2010

Agenda Item No.: 10-11-3

WHEREAS, the Air Resources Board (ARB or Board) adopted the Regulation for In-Use On-Road Diesel-Fueled Heavy-Duty Drayage Trucks (Drayage regulation) title 13, California Code of Regulations (CCR), sections 2027, on December 7, 2007, and amendments thereto on December 11, 2008, pursuant to the authority set forth in Resolutions 07-58 and 08-43, which are respectively incorporated by reference herein;

WHEREAS, the Phase 1 emission standards in the Drayage regulation required drayage truck owners to upgrade their trucks by investing in cleaner technology beginning January 2010, which will reduce diesel particulate matter (PM) emissions from the heaviest (Class 8) diesel drayage trucks operating at California's ports and intermodal rail yards by over 86 percent;

WHEREAS, the current Phase 2 requirement of the Drayage regulation mandates that drayage trucks meet or exceed 2007 model year California or federal emission standards by January 1, 2014, potentially requiring a second truck upgrade and investment within four years;

WHEREAS, in 2009-2010, ARB and local agencies provided over \$100 million in state Proposition 1B-funded incentives to drayage truck owners to achieve early or extra emission reductions through the replacement of old trucks with new cleaner models and the installation of diesel PM retrofit devices on existing trucks; the combination of the Drayage regulation and these incentives have significantly reduced the health risk from diesel PM in communities near ports and intermodal rail yards;

WHEREAS, owners of diesel drayage trucks made significant private investments in 2008-2010 to purchase cleaner trucks and diesel PM retrofit devices to comply with the Drayage regulation;

WHEREAS, since the Drayage regulation went into effect, some motor carriers serving ports and intermodal rail yards have employed different types of trucks or new business models to avoid the regulatory compliance costs associated with reducing diesel PM;

WHEREAS, some motor carriers have shifted from use of Class 8 diesel trucks, which are subject to the control requirements in the Drayage regulation, to use of lighter (Class 7) diesel trucks, which are currently exempt from the Drayage regulation;

WHEREAS, some motor carriers have begun using a practice known as "dray-off," which involves a cleaner, complying truck picking up a cargo container at a port and hauling it outside the port property to a nearby street or staging area where a non-complying truck picks up the container intact for transport to its destination, thereby reducing the community health benefits expected from the Drayage regulation;

WHEREAS, the increase in use of Class 7 trucks and the practice of dray-off result in higher diesel PM emissions in communities near ports and intermodal railyards than would be achieved with a fully compliant truck fleet serving these facilities;

WHEREAS, the increase in use of Class 7 trucks and the practice of dray-off that allow motor carriers and truck fleets to avoid investing in cleaner technology and create an unfair business environment for truck owners who did invest in complying trucks to meet the requirements and intent of the Drayage regulation;

WHEREAS, California and the nation have been in an economic recession that is deeper and longer lasting than anticipated when the Board adopted the Regulation to Reduce Emissions of Diesel PM, Oxides of Nitrogen (NOx) and Other Criteria Pollutants from In-Use Heavy Duty Diesel-Fueled Vehicles (Truck and Bus regulation) on December 11, 2008;

WHEREAS, the recession has had a significant impact on overall trucking activities, including companies that operate drayage trucks in the normal course of business;

WHEREAS, ARB staff has undertaken a thorough review and update of its emissions inventory for on-road heavy-duty diesel vehicles used in all vocations and determined that emissions from such vehicles are substantially lower than estimated in December 2008 when the Truck and Bus regulation was initially adopted;

WHEREAS, ARB staff presented the results of the updated emissions inventory to the Board at the November 2010 Board hearing, and the Board took public comment on the staff presentation and findings;

WHEREAS, ARB staff met and worked with affected private industry, federal, state, and local public agencies, and the public in developing proposed amendments to the Truck and Bus regulation, the Drayage regulation, and other regulations, holding numerous meetings with individual affected stakeholders, four public workshops, six community outreach meetings between June 2010 and November 2010, and sending email notifications to over 4,500 addresses;

WHEREAS, with the information and comments received from such meetings, ARB staff prepared a report, entitled "Staff Report: Initial Statement of Reasons for Proposed Rulemaking – Proposed Amendments to The Truck and Bus Regulation, The Drayage Truck Regulation and The Tractor-Trailer Greenhouse Gas Regulation" and Appendices A-J, all released on October 28, 2010 (collectively referred to hereinafter as "ISOR");

WHEREAS, the ISOR, along with the "Staff Report: Initial Statement of Reasons for Proposed Rulemaking – Proposed Regulation for Drayage Trucks" and the "Technical Support Document: Regulation to Control Emissions from In-Use On-Road Diesel-Fueled Heavy Duty Drayage Trucks" that were released on October 19, 2007 (collectively referred to hereinafter as "Staff Report-2007"), and the "Risk Reduction Plan to Reduce Particulate Matter Emissions from Diesel-Fueled Engines and Vehicles," adopted by the Board on September 28, 2000, constitute the reports required under Health and Safety Code section 39665;

WHEREAS, the Staff Report-2007 and the ISOR identified and explained the need and appropriate degree of regulation of diesel PM, NOx, and other pollutants from drayage trucks and the feasibility of regulating emissions from diesel engines on drayage trucks that operate at California's ports and intermodal rail yards;

WHEREAS, the ISOR further discussed, to the extent data could reasonably be made available, the factors specified in Health and Safety Code sections 39665(b), 43013, and 43018, including, but not limited to the estimates of emissions; exposure; potential cancer risk and non-cancer health effects associated with the operation of drayage trucks at California's ports and intermodal rail yards; feasible control options; potential environmental impacts; and the necessity, cost of compliance and/or cost savings, and technological feasibility of the proposed amendments to the Drayage regulation;

WHEREAS, the Staff Report-2007 also discussed risk evaluations ARB staff has performed of exposure to diesel PM emissions from drayage trucks, using U.S. Environmental Protection Agency (U.S. EPA)-approved and ARB-recommended air dispersion models, and these evaluations indicate potential cancer risks for off-site receptor locations near California's major ports at levels exceeding 500 chances in a million;

WHEREAS, in addition to discussing the potential cancer risks due to exposure to diesel PM emissions, the Staff Report-2007 discussed non-cancer risk evaluations ARB staff performed of exposure to diesel PM emissions from drayage truck diesel engines, and these evaluations indicate that exposure to these emissions can be associated with premature deaths and numerous other non-cancer health impacts;

WHEREAS, in addition to discussing the effects of exposure to diesel PM emissions, the Staff Report-2007 further determined that the emissions from diesel drayage trucks contribute to levels of ozone and fine particulate matter (PM2.5) that exceed federal and state ambient air quality standards;

WHEREAS, the ISOR presented staff's proposal that the Board adopt the further amendments to the Drayage regulation, as set forth in Appendix B to the ISOR;

WHEREAS, staff has proposed amendments to the Drayage regulation that would:

1. Expand the scope and applicability of the Drayage regulation to include Class 7 trucks with gross vehicle weight ratings of 26,001 pounds through 33,000 pounds and require that these trucks operate with an ARB verified level 3 diesel PM emission control strategy by January 1, 2014;
2. Expand the scope and applicability of the Drayage regulation beyond drayage trucks operating on port and intermodal rail yard properties to also include drayage trucks operating off of port and intermodal rail yards;
3. Clarify that only drayage trucks operating on port or intermodal rail yard properties are required to be registered in the Drayage Truck Registry;
4. Clarify that motor carriers are only required to keep drayage truck dispatch records for drayage trucks that are dispatched to a port or intermodal rail yard;
5. Clarify that drayage trucks with model year 2004-2006 engines are required to be equipped with a level 3 ARB verified diesel emission control strategy based on engine model year by the appropriate deadlines in Phase 1;
6. Eliminate the current Phase 2 requirement that mandates drayage trucks meet or exceed 2007 model year California or federal emission standards by January 1, 2014;
7. Require drayage truck operators to identify and provide documentation on the origin and destination of cargo, chassis, and intermodal equipment to enforcement personnel; and
8. Formally sunset the Drayage regulation on December 31, 2016, after which, starting January 1, 2017, all drayage trucks will be subject to title 13, CCR, section 2025, the Truck and Bus regulation which will provide drayage truck owners with a decade or more before they must make a second upgrade to cleaner technology;

WHEREAS, the California Environmental Quality Act (CEQA), section 21080.5 of the Public Resources Code and title 17, CCR, section 60006 require that no project that may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, the ISOR discussed the emission impacts of the proposed amendments to the Drayage regulation, in which ARB staff determined that there would be no diesel PM emission disbenefits resulting from the proposed amendments to the Drayage regulation;

WHEREAS, the Board has considered the impact of the proposed Drayage regulation on the economy of the state and the potential for adverse economic impacts on California business enterprises and individuals;

WHEREAS, ARB is making over \$100 million in new Proposition 1B-funding available to local agencies in January 2011 to provide incentives for cleaner trucks and diesel PM retrofits; owners of eligible non-drayage and drayage trucks can apply for this funding on a competitive basis to reduce their costs for early or extra compliance with ARB truck regulations;

WHEREAS, a public hearing and other administrative proceedings have been held in accordance with the provisions of chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code;

WHEREAS, based on information in the rulemaking record, including the ISOR, updated on-road vehicle emissions inventory, written comments, and testimony provided at the public hearing, the Board finds regarding the staff's proposed amendments to title 13, CCR, section 2027 that:

1. Expanding the scope of the Drayage regulation to include Class 7 drayage trucks and drayage trucks that operate off of port and intermodal rail yard property is necessary to ensure that the diesel PM emission reduction goals of the Drayage regulation are achieved and to eliminate business practices that are jeopardizing those goals and fostering an uncompetitive business environment;
2. While acknowledging the effects of the recession on the trucking industry as described earlier in this resolution, it is necessary and appropriate to retain the Phase 2 requirements of the Drayage regulation to protect residents of impacted communities who continue to suffer adverse health impacts from exposure to diesel PM, PM2.5 and ozone. Further, the Board recognized that the Drayage regulation is already being implemented and that retaining the Phase 2 requirements would provide fairness within the drayage industry to the truck owners who complied early by investing in new trucks with the expectation that their competitors would also be required to do so by 2014;
3. The proposed sunset provision in the Drayage regulation is necessary to align the longer-term requirements for drayage trucks with those for non-drayage trucks under the Truck and Bus regulation and provides for the transition to just one regulation in 2023;
4. In accordance with Health and Safety Code section 39667 and based upon the Board's determinations under Health and Safety Code section 39662, the amendments to the Drayage regulation have been designed to achieve the maximum possible reduction in public exposure to toxic air contaminants utilizing best available control technology;

5. In accordance with Health and Safety Code section 43013(b), the in-use emission standards and other requirements specified in the amendments to the Drayage regulation are necessary, cost-effective, and technologically feasible for drayage truck diesel engines within the time provided for compliance;
6. The reporting requirements of the regulation are necessary for the health, safety, and welfare of the people of the state.

WHEREAS, pursuant to the requirements of the California Environmental Quality Act (CEQA) and the Board's regulations under its certified regulatory program, the Board further finds that:

1. ARB staff has prepared an environmental analysis for the staff's proposed amendments, which is contained in Chapter VI of the Initial Statement of Reasons (ISOR);
2. Staff's environmental analysis determined that the staff's proposed amendments, including the subsequent incorporation of the Drayage regulation into the Truck and Bus regulation, would substantially reduce both PM and NOx emissions, as compared to the environmental conditions that currently exist; and
3. The Executive Officer is the decision maker for the purposes of title 17, California Code of Regulations, section 60007, and no final decision will be made until comments on the environmental analysis are fully considered and addressed by the decision maker.

NOW, THEREFORE, BE IT RESOLVED that the Board directs the Executive Officer to take the following actions:

1. Make the modified regulatory language consistent with the findings herein and as set forth below, with such other conforming modifications as may be appropriate, available for public comment for a period of 15 days, provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make such modifications as may be appropriate in light of the comments received, and shall present the regulation to the Board for further consideration if he determines that this is warranted;
2. Evaluate all comments received during the public comment periods, including comments raising significant environmental issues, and prepare and approve written responses as required by Government Code section 11346.9, Public Resource Code section 21080.5(d)(2)(D), and title 17, CCR, section 60007;
3. Determine whether there are feasible alternatives or mitigation measures that could be implemented to reduce or eliminate any potential adverse environmental impacts;

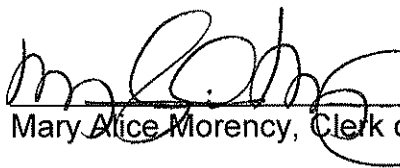
4. Make findings as required by Public Resources Code § 21081 if the proposed amendments would result in one or more significant adverse environmental effects; and
5. Take final action to adopt the proposed amendments, consistent with the findings and directives herein, and any additional conforming modifications that may be appropriate, and any modifications that are necessary to ensure that all feasible mitigation measures or feasible alternatives that would substantially reduce any significant adverse environmental impacts have been incorporated into the final action, or return the proposed amendments and findings to the Board for further consideration before taking final action, if he determines that this is warranted.

BE IT FURTHER RESOLVED that before making any determination on final adoption of the amendments, the Executive Officer modify and make available for public comment the proposed requirements regarding Class 7 drayage trucks to require that those operating in the South Coast Air Basin be equipped with level 3 Verified Diesel Emission Control Strategy for PM by January 1, 2012.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to aid the drayage industry with compliance by developing user-friendly materials within six months of approval by the Office of Administrative Law of the proposed Drayage regulation amendments, conducting outreach, and making information available on the Internet and through other forms of distribution to affected fleets.

BE IT FURTHER RESOLVED that the Board finds that section 209(a) of the federal Clean Air Act (CAA) does not preempt California from adopting emission standards for non-new on-road motor vehicles and that California is not required to request a waiver from the U.S. EPA pursuant to CAA section 209(b).

I hereby certify that the above is a true and correct copy of Resolution 10-45, as adopted by the Air Resources Board.



Mary Alice Morency, Clerk of the Board