



# South Coast Air Quality Management District

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BOARD MEETING DATE: February 1, 2013

AGENDA NO. 29

**PROPOSAL:** Approve Control Measure IND-01, Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities, for Inclusion in Final 2012 Air Quality Management Plan

**SYNOPSIS:** The Final 2012 Air Quality Management Plan (AQMP) was adopted by the Board on December 7, 2012, with a motion to continue the hearing on the approval of Control Measure IND-01 (Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities) to the Board's February 1, 2013 public meeting. The Board directed that during the interim period, staff will prepare a detailed presentation on the need and legal basis for IND-01 to the Marine Port Committee and continue to seek input on the control measure from interested parties such as the Ports of Los Angeles and Long Beach.

**COMMITTEE:** Marine Port, January 18, 2013; Reviewed

### RECOMMENDED ACTIONS:

1. Approve Control Measure IND-01 for inclusion in the Final 2012 Air Quality Management Plan, in accordance with the attached resolution in Attachment A.
2. Authorize the Executive Officer to make appropriate changes to the adopted Control Measure IND-01 (if necessary) to reflect amendments adopted at the Public Hearing; and then
3. Direct the Executive Officer to forward the approved Control Measure IND-01 (as changed) to the California Air Resources Board (CARB) for its approval and subsequent submittal to the U.S. Environmental Protection Agency (U.S. EPA) as part of the 2012 PM2.5 SIP.

APPROVED by the South Coast Air Quality Management District Board	
Date:	<i>2/1/13</i>
	<i>Sandra McDaniel</i>
EC:PF:mk	Clerk of the Board

*Barry R. Wallerstein*  
Barry R. Wallerstein, D.Env.  
Executive Officer

## **Background**

The 2012 AQMP set forth a comprehensive program that will lead the Basin into compliance with the federal 24-hour PM<sub>2.5</sub> air quality standard, satisfies the planning requirements of the federal Clean Air Act, and provides an update to the Basin's commitments towards meeting the federal 8-hour ozone standards. It also serves to satisfy the recent U.S. EPA requirements for a new attainment demonstration of the revoked 1-hour ozone standard, as well as a VMT emissions offset demonstration. Specifically, the Plan serves as the official State Implementation Plan (SIP) submittal for the federal 2006 24-hour PM<sub>2.5</sub> standard, for which U.S. EPA established a due date of December 14, 2012. One of the PM<sub>2.5</sub> control measures is a backstop measure, IND-01, with the purpose of ensuring projected emissions reductions from the Ports' emission control efforts are achieved. These emission reductions were included in the baseline inventory such that any changes to these emissions reductions could affect the attainment demonstration. The Ports' emission control efforts largely began in 2006 when the Ports of Los Angeles and Long Beach, with the participation and cooperation of the staff of the SCAQMD, CARB, and U.S. EPA, adopted the San Pedro Bay Ports Clean Air Action Plan (CAAP). The CAAP was further amended in 2010 to update many of the goals and implementation strategies for reduction of air emissions and health risks associated with port operations while maintaining port development and economic growth.

If the backstop measure becomes effective (i.e. if emissions from port-related sources exceed targets for NO<sub>x</sub>, SO<sub>x</sub>, and PM<sub>2.5</sub>), emission reduction methods would be proposed by the Ports and could include some or all port-related sources (trucks, cargo handling equipment, harbor craft, marine vessels, locomotives, and stationary equipment) to the extent cost-effective strategies are technically feasible and within the Ports' authority.

At the December 7, 2012 public hearing, a motion was made by a Governing Board member to continue the hearing only to the Governing Board's February 1, 2013 public meeting [for Control Measure IND-01 only]. The Board directed staff to prepare a detailed presentation on the need and legal basis for IND-01 during the interim period for the AQMD Marine Port Committee and continue to seek input on the control measure from interested parties such as the Ports of Los Angeles and Long Beach.

## **Public Process**

The 2012 AQMP Advisory Group was formed to provide feedback and recommendations on the development of the 2012 AQMP, including policy issues and control strategies. Representatives from the Port of Los Angeles, Port of Long Beach, Pacific Merchant Shipping Association and Los Angeles Area Chamber of Commerce participated as members of the 2012 AQMP Advisory Group that met 14 times during the development of the 2012 AQMP and the proposed control measures, including IND-01.

Further, staff conducted an enhanced 2012 AQMP Outreach Program to inform and engage a wide range of stakeholders on the requirements, approach, goals, and impacts of the 2012 AQMP and the proposed control measures including IND-01. The enhanced outreach to all stakeholders in the region took place through numerous presentations, workshops, focus groups and meetings throughout the Basin. In addition to meeting with the Ports of Los Angeles and Long Beach, staff met with other port-related stakeholders such as Los Angeles Chamber of Commerce's Transportation & Goods Movement Council, Regulatory Flexibility Group, and the Southern California Business Coalition that is comprised of regional businesses and associations, such as California Trucking Association, Harbor Trucking Association and Los Angeles County Business Federation.

As directed by the Governing Board at the December meeting, staff briefed the Marine Port Committee on January 18, 2013 regarding the legal authority and need for IND-01. Representatives from the Ports of Long Beach and Los Angeles provided public comments supporting an alternative approach to IND-01 in the form of a proposed "Memorandum of Agreement" (MOA). The proposed MOA would be in lieu of the backstop measure and would have the ports and the air agencies (AQMD, CARB, and U.S. EPA) as parties to the agreement. Staff indicated that the proposed MOA does not contain any commitment to achieve any emission reductions, even if measures are cost-effective and feasible for the Ports to implement. The Marine Port Committee meeting Minutes are provided in Attachment B.

### **Proposal and Key Findings**

The Control Measure IND-01 is carried over from the 2007 AQMP/SIP with clarifications to the applicability and implementation. After the December 2012 Board meeting, further modifications were made based on continued discussion with Port staff. The key elements are summarized as follows:

- The backstop measure becomes effective only if the emission targets for NO<sub>x</sub>, SO<sub>x</sub> and PM<sub>2.5</sub> from port-related sources exceed the levels projected by the Ports and assumed in the 2012 AQMP.
- If emissions do not exceed such targets, the Ports will have no obligations under this control measure.
- If additional emission reductions are needed, the Ports would be required to submit a compliance plan to address the emission reduction shortfall.
- Emission reduction methods in the plan would be proposed by the Ports and potentially could include clean technology funding programs, lease provisions, port tariffs, or incentives/disincentives to implement measures, to the extent cost effective and feasible strategies are available.
- The backstop rule would not require any strategy that lacks legal authority, is not cost-effective, or is not feasible to be implemented.
- Sources that are unrelated to the Ports would not be subject to emission reductions under this control measure.

- An option for an alternative mechanism to a District Rule is provided, if it is legally enforceable, equivalent in effectiveness, and is submitted for SIP inclusion with full public process.
- Staff is committed to continue to work collaboratively with the Ports, agencies, environmental community groups, industry representatives, and other interested parties through the rule development process.

### **Public Comments**

The Ports of Los Angeles and Long Beach have provided comments on Control Measure IND-01: *Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities* (Port Backstop Measure). The Ports have commented that the AQMD “reconsider its approach and allow the continuation of the successful collaborative work by the ports, regulatory agencies and other stakeholders under the voluntary Clean Air Action Plan and the San Pedro Bay Standards.” As a result, the Ports have requested that the Port Backstop Measure be removed from the 2012 AQMP. The Ports have commented that they “can’t accept any regulatory action by the AQMD that will result in AQMD oversight of port actions, which could result in enforcement actions by the AQMD on the ports for failure of the port industry to meet the ports’ emission reduction goals.” More recently, the Ports suggested an alternative MOA approach.

### **Key Policy Issues**

There are five key policy issues regarding the Port Backstop Measure:

- 1) **The need for IND-01:** The AQMD staff agrees that the Ports have made significant progress in reducing emissions. Through the CAAP, the Ports have voluntarily implemented programs to reduce emissions from a variety of port-related sources. As such, the Ports of Los Angeles and Long Beach are collectively still the single largest fixed source of air pollution in Southern California. Port-related sources such as marine vessels, locomotives, trucks, harbor craft and cargo handling equipment, continue to be the largest sources of NO<sub>x</sub>, PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors in the region. These sources play a major role in the Basin’s ability to achieve the national PM<sub>2.5</sub> ambient air quality standards. The AQMD staff believes that it is appropriate and necessary to include a backstop measure to ensure that the Basin’s largest source of NO<sub>x</sub> and PM<sub>2.5</sub> emissions maintains its course of emission reductions. The projected emissions from port-related sources are included in the “baseline” emissions assumed in this plan to attain the PM<sub>2.5</sub> standards. While many of the emission reduction targets in the CAAP result from implementation of federal and state regulations (either adopted prior to or after the CAAP), some are contingent upon the Ports taking and maintaining actions which are not required by air quality regulations.

- 2) **The legal basis for IND-01:** The AQMD can regulate Port sources under its existing authority under state law. As stated in Control Measure IND-01, the District has the authority to adopt rules to control emissions from “indirect sources” under existing law. The Clean Air Act defines an indirect source as a “facility, building, structure, installation, real property, road or highway which attracts, or may attract, mobile sources of pollution,” 42 U.S.C. § 7410(a)(5)(C); CAA § 110(a)(5)(C). Under this definition, the Ports are an indirect source. Specified in the California State Air Pollution Control Laws, as codified in the California Health & Safety Code, districts are further authorized to adopt rules to “reduce or mitigate emissions from indirect sources” of pollution. (Health & Safety Code § 40716(a)(1)). The AQMD is also required to adopt indirect source rules for areas where there are “high-level, localized concentrations of pollutants or with respect to any new source that will have a significant impact on air quality in the South Coast Air Basin,” (Health & Safety Code § 40440(b)(3)). AQMD staff believes that the Ports fit within the definition of an indirect source. Also, there is no authority that we are aware of saying that an indirect source measure may only affect mobile sources that are owned or operated by the indirect source. For example, Rule 2202 applies to employers of 250 or more but is intended to reduce emissions from vehicles owned by the employees of the regulated indirect source. An indirect source measure may be valid even though it affects mobile sources for which the Clean Air Act preempts the agency from requiring emission standards. See *National Assn of Home Builders vs. San Joaquin Valley APCD*, 627 F. 3d 730 (9<sup>th</sup> Cir. 2010).
- 3) **Voluntary vs Enforceable Commitment:** It has been U.S. EPA’s policy that only emissions reductions from enforceable commitments or regulatory actions can be credited for SIP purposes. Control Measure IND-01 allows the 2012 AQMP to assume the reductions; otherwise other sources need to make up the differences. Since port sources are the single largest category of emissions, it is only fair for the Ports to commit to their fair share of reductions.
- 4) **Compliance Plan Approval:** If the rule is triggered because emissions exceed the targets in the PM2.5 plan, the Ports will be required to develop and implement a plan to reduce emissions from port-related sources to meet the emission targets over a period of time. AQMD does not need to approve the CAAP, which may include a broader scope and more aggressive targets. The time period to achieve and maintain emission targets will be established pursuant to procedures and criteria developed during rulemaking and specified in the rule. The District would approve the plan if it met the requirements of the rule.

- 5) **Enforcement of Compliance Plan:** Compliance will be verified through compliance plans, and enforced through submittal and review of records, and emission inventories. Enforcement provisions will be discussed as part of the rule development process.

### **CEQA**

Pursuant to California Environmental Quality Act (CEQA) Guidelines §15168, the AQMD has prepared a Program Environmental Impact Report (PEIR) for the 2012 AQMP that included an evaluation of impacts from the implementation of all control measures including IND-01. The Final PEIR was certified by the SCAQMD Governing Board on December 7, 2012.

Submitted for the Governing Board's consideration consists of the document entitled:

- Resolution (Attachment A)
- Control Measure IND-01 (Attachment 1)
- Marine Port Committee January 18, 2013 Meeting Minutes (Attachment B)

### **Attachments**

- A. Resolution  
Attachment 1 – Control Measure IND-01
- B. Marine Port Committee January 18, 2013 Meeting Minutes

**ATTACHMENT A  
RESOLUTION NO. 13-1**

**A Resolution of the South Coast Air Quality Management District (AQMD or District) Governing Board to Adopt Control Measure IND-01 (Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities) as revised for submittal into the California State Implementation Plan (SIP).**

**A Program Environmental Impact Report (EIR) for the 2012 Air Quality Management Plan (AQMP), which includes IND-01, was previously prepared and certified by the AQMD Governing Board as being completed in compliance with the California Environmental Quality Act (CEQA) on December 7, 2012; therefore no further action on the Program EIR is required.**

WHEREAS, the Final 2012 AQMP, which included IND-01, was adopted by the AQMD Governing Board on December 7, 2012, with a motion to continue the hearing on the approval of Control Measure IND-01(Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities) to the Governing Board's February 1, 2013 public meeting; and

WHEREAS, staff met with affected sources to address concerns raised and met with the Marine Port Committee on January 18, 2013, per Board directive, to discuss the intent and need for IND-01; and

WHEREAS, the South Coast Air Quality Management District is committed to comply with the requirements of the federal Clean Air Act; and

WHEREAS, the South Coast Air Quality Management District Governing Board is committed to comply with the requirements of the California Clean Air Act; and

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WHEREAS, the South Coast Air Quality Management District Governing Board is committed to achieving healthful air in the South Coast Air Basin and all other parts of the District at the earliest possible date; and

WHEREAS, the Draft Final Socioeconomic Report on the 2012 AQMP, which included IND-01, was adopted by the Governing Board at the December 7, 2012 Public Hearing; and

WHEREAS, significant emission reductions, including those reductions achieved by the Ports and projected in the inventory, must be achieved

from sources under state and federal jurisdiction for the South Coast Air Basin to attain the federal air quality standards; and

WHEREAS, the record of the public hearing proceedings, including CEQA proceedings, is located at South Coast Air Quality Management District, 21865 Copley Drive, Diamond Bar, California 91765, and the custodian of the record is the Clerk of the Board; and

BE IT FURTHER RESOLVED, the District commits to continue working with the ports on the implementation of control measure IND-01 (Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Sources) as shown in Attachment 1.

BE IT FURTHER RESOLVED, the Governing Board finds and determines, taking into consideration the factors in §(d)(4)(D) of the Governing Board Procedures, that the modifications that have been made to IND-01, since the Final PEIR was certified by the Governing Board at the December 7, 2012 Public Hearing would not constitute significant new information within the meaning of the CEQA Guidelines; and

BE IT FURTHER RESOLVED, none of the modifications to the IND-01 alter any of the conclusions reached in the Final PEIR on the 2012 AQMP, nor provide new information of substantial importance that would require preparation of a subsequent CEQA document; and

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, pursuant to the requirements of Title 14 California Code of Regulations previously adopted Findings pursuant to §15091 and adopted the Statement of Overriding Considerations pursuant to §15093 at the December 7, 2012 Public Hearing; and

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board previously adopted the Mitigation Monitoring and Reporting Plan, as required by Public Resources Code, at the December 7, 2012 Public Hearing; and

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, whose members reviewed, considered and approved the information contained in the document listed herein, adopts IND-01 or an alternative approach as amended by the final changes set forth by the AQMD Governing Board and the associated document listed in Attachment 1 to this Resolution.



BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, requests that IND-01 be submitted into the SIP.

BE IT FURTHER RESOLVED, that the Executive Officer is hereby directed to forward a copy of this Resolution and IND-01 as amended by the final changes, to CARB, and to request that these documents be forwarded to the U.S. EPA for approval as part of the California State Implementation Plan. In addition, the Executive Officer is directed to forward any other information requested by the U.S. EPA for informational purposes.


AYES: Burke, Cacciotti, Gonzales, Loveridge, Lyou, Parker, Pulido, and Yates.

NOES: Antonovich, Benoit, and Nelson.

ABSTAIN: None.

ABSENT: Mitchell and Perry.

Dated: 2-1-2013

  
Clerk of the District Board

## **ATTACHMENT 1**

The following document is being considered by the South Coast Air Quality Management District Governing Board for approval:

- **Control Measure IND-01 (Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities)**

**ATTACHMENT 1**

**IND-01: BACKSTOP MEASURE FOR INDIRECT SOURCES OF EMISSIONS FROM PORTS AND PORT-RELATED FACILITIES  
[NO<sub>x</sub>, SO<sub>x</sub>, PM<sub>2.5</sub>]**

**CONTROL MEASURE SUMMARY**

**SOURCE CATEGORY:** IF THE BACKSTOP MEASURE BECOMES EFFECTIVE (I.E. IF EMISSIONS FROM PORT-RELATED SOURCES EXCEED TARGETS FOR NO<sub>x</sub>, SO<sub>x</sub>, AND PM<sub>2.5</sub>), AFFECTED SOURCES WOULD BE PROPOSED BY THE PORTS AND COULD INCLUDE SOME OR ALL PORT-RELATED SOURCES (TRUCKS, CARGO HANDLING EQUIPMENT, HARBOR CRAFT, MARINE VESSELS, LOCOMOTIVES, AND STATIONARY EQUIPMENT), TO THE EXTENT COST EFFECTIVE AND FEASIBLE STRATEGIES ARE AVAILABLE

**CONTROL METHODS:** IF THE BACKSTOP MEASURE BECOMES EFFECTIVE, EMISSION REDUCTION METHODS WOULD BE PROPOSED BY THE PORTS AND POTENTIALLY COULD INCLUDE CLEAN TECHNOLOGY FUNDING PROGRAMS, LEASE PROVISIONS, PORT TARIFFS, OR INCENTIVES/DISINCENTIVES TO IMPLEMENT MEASURES, TO THE EXTENT COST EFFECTIVE AND FEASIBLE STRATEGIES ARE AVAILABLE

**EMISSIONS (TONS/DAY):**

ANNUAL AVERAGE	2008	2014	2019	2023
<i>NO<sub>x</sub></i> INVENTORY*	78.6	51.2	47.2	39.2
<i>NO<sub>x</sub></i> REDUCTION*		N/A	N/A	N/A
<i>NO<sub>x</sub></i> REMAINING*		51.2	47.2	39.2
<i>SO<sub>x</sub></i> INVENTORY*	25.5	1.8	2.3	2.7
<i>SO<sub>x</sub></i> REDUCTION*		N/A	N/A	N/A
<i>SO<sub>x</sub></i> REMAINING*		1.8	2.3	2.7
<i>PM<sub>2.5</sub></i> INVENTORY*	3.7	1.0	1.0	1.1
<i>PM<sub>2.5</sub></i> REDUCTION*		N/A	N/A	N/A
<i>PM<sub>2.5</sub></i> REMAINING*		1.0	1.0	1.1

**CONTROL COST:** TBD

**IMPLEMENTING AGENCY:** SCAQMD

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*\* The purpose of this control measure is to ensure the emissions from port-related sources are at or below the AQMP baseline inventories for PM<sub>2.5</sub> attainment demonstration. The emissions presented herein were used for attainment demonstration of the 24-hr PM 2.5 standard by 2014.*

## DESCRIPTION OF SOURCE CATEGORY

This control measure is carried over from the 2007 AQMP/SIP. If the backstop measure goes into effect, affected sources would be proposed by the ports and could include some or all port-related sources (trucks, cargo handling equipment, harbor craft, marine vessels, locomotives, and stationary equipment), to the extent cost effective and feasible strategies are available.

Other sources—i.e. sources that are unrelated to the Ports—would not in any way be subject to emission reductions under this measure (including through funding of emission reduction measures, or purchase of emission credits, by the Ports or port tenants).

## Background

*Emissions and Progress.* The Ports of Los Angeles and Long Beach are the largest in the nation in terms of container throughput, and collectively are the single largest fixed source of air pollution in Southern California. Emissions from port-related sources have been reduced significantly since 2006 through efforts by the Ports and a wide range of stakeholders. In large part, these emission reductions have resulted from programs developed and implemented by the Ports in collaboration with port tenants, marine carriers, trucking interests and railroads. Regulatory agencies, including U.S.EPA, CARB and SCAQMD, have participated in these collaborative efforts from the outset, and some measures adopted by the Ports have led the way for adoption of analogous regulatory requirements that are now applicable statewide. These port measures include the Clean Truck Program and actions to deploy shore-power and low emission cargo handling equipment. The Ports of Los Angeles and Long Beach have also established incentive programs which have not subsequently been adopted as regulations. These include incentives for routing of vessels meeting IMO Tier 2 and 3 NO<sub>x</sub> standards, and vessel speed reduction. In addition, the ports are, in collaboration with the regulatory agencies, implementing an ambitious Technology Advancement Program to develop and deploy clean technologies of the future.

Port sources such as marine vessels, locomotives, trucks, harbor craft and cargo handling equipment, continue to be among the largest sources of PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors in the region. Given the large magnitude of emissions from port-related sources, the substantial efforts described above play a critical part in the ability of the South Coast Air Basin to attain the national PM<sub>2.5</sub> ambient air standard by federal deadlines. This measure provides assurance that emissions from the Basin's largest fixed emission source will continue to support attainment of the federal 24-hour PM<sub>2.5</sub> standard. Reductions in PM<sub>2.5</sub> emissions will also reduce cancer risks from diesel particulate matter.

*Clean Air Action Plan.* The emission control efforts described above largely began in 2006 when the Ports of Los Angeles and Long Beach, with the participation and cooperation of the staff of the SCAQMD, CARB, and U.S. EPA, adopted the San Pedro Bay Ports Clean

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Air Action Plan (CAAP). The CAAP was further amended in 2010, updating many of the goals and implementation strategies to reduce air emissions and health risks associated with port operations while allowing port development to continue. In addition to addressing health risks from port-related sources, the CAAP sought the reduction of criteria pollutant emissions to the levels that assure port-related sources decrease their “fair share” of regional emissions to enable the Basin to attain state and federal ambient air quality standards.

The CAAP focuses primarily on reducing diesel particulate matter (DPM), along with NO<sub>x</sub> and SO<sub>x</sub>. The CAAP includes proposed strategies on port-related sources that are implemented through new leases or port-wide tariffs, Memoranda of Understanding (MOU), voluntary action, grants or incentive programs.

The goals set forth in the CAAP include:

- Health Risk Reduction Standard: 85% reduction in population-weighted cancer risk by 2020
- Emission Reduction Standards:
  - By 2014, reduce emissions by 72% for DPM, 22% for NO<sub>x</sub>, and 93% for SO<sub>x</sub>
  - By 2023, reduce emissions by 77% for DPM, 59% for NO<sub>x</sub>, and 93% for SO<sub>x</sub>

In addition to the CAAP, the Ports have completed annual inventories of port-related sources since 2005. These inventories have been completed in conjunction with a technical working group composed of the SCAQMD, CARB, and U.S. EPA. Based on the latest inventories, it is estimated that the emissions from port-related sources will meet the 2012 AQMP emission targets necessary for meeting the 24-hr PM<sub>2.5</sub> ambient air quality standard. The projected emissions from port-related sources are included in the “baseline” emissions assumed in this plan to attain the PM<sub>2.5</sub> standards.

While many of the emission reduction targets in the CAAP result from implementation of federal and state regulations (either adopted prior to or after the CAAP), some are contingent upon the Ports taking and maintaining actions which are not required by air quality regulations. These actions include the Expanded Vessel Speed Reduction Incentive Program, lower-emission switching locomotives, and incentives for lower emission marine vessels. This AQMP control measure is designed to provide a “backstop” to the Ports’ actions to provide assurance that, if emissions do not continue to meet projections, the Ports will develop and implement plans to get back on track, to the extent that cost effective and feasible strategies are available.

### Regulatory History

The CAAP sets out the emission control programs and plans that will help mitigate air quality impacts from port-related sources. The CAAP relies on a combination of regulatory requirements and voluntary control strategies which go beyond U.S. EPA or CARB requirements, or are implemented faster than regulatory rules. The regulations which the

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CAAP relies on include international, federal and state requirements controlling port-related sources such as marine vessels, harbor craft, cargo handling equipment, locomotives, and trucks.

The International Maritime Organization (IMO) MARPOL Annex VI, which came into force in May 2005, set new international NO<sub>x</sub> emission limits on Category 3 (>30 liters per cylinder displacement) marine engines installed on new vessels retroactive to the year 2000. In October 2008, the IMO adopted an amendment which places a global limit on marine fuel sulfur content of 0.1 percent by 2015 for specific areas known as Emission Control Areas (ECA). The South Coast District waters of the California coast are included in an ECA and ships calling at the Port of Los Angeles and Long Beach have to meet this new fuel standard. In addition, the 2008 IMO amendment required new ships built after January 1, 2016 which will be used in an Emission Control Area (ECA) to meet a Tier III NO<sub>x</sub> emission standard which is 80 percent lower than the original emission standard.

To reduce emissions from switch and line-haul locomotives, the U.S. EPA in 2008 established a series of increasingly strict emission standards for new or remanufactured locomotive engines. The emission standards are implemented by "Tier" with Tier 0 as the least stringent and Tier 4 being the most stringent. U.S. EPA also established remanufacture standards for both line haul and switch engines. For Tiers 0, 1, and 2, the remanufacture standards are more stringent than the new manufacture standards for those engines for some pollutants.

To reduce emissions from on-road, heavy-duty diesel trucks, U.S. EPA established a series of cleaner emission standards for new engines, starting in 1988. The U.S. EPA promulgated the final and cleanest standards with the 2007 Heavy-Duty Highway Rule. Starting with model year 2010, all new heavy-duty trucks have to meet the final emission standards specified in the rule.

On December 8, 2005, CARB approved the Regulation for Mobile Cargo-Handling Equipment (CHE) at Ports and Intermodal Rail Yards (Title 13, CCR, Section 2479), which is designed to use best available control technology (BACT) to reduce diesel PM and NO<sub>x</sub> emissions from mobile cargo-handling equipment at ports and intermodal rail yards. The regulation became effective December 31, 2006. Since January 1, 2007, the regulation imposes emission performance standards on new and in-use terminal equipment that vary by equipment type.

In 1998, the railroads and CARB entered into an MOU to accelerate the introduction of Tier 2 locomotives into the SCAB. The MOU includes provisions for a fleet average in the SCAB, equivalent to U.S. EPA's Tier 2 locomotive standard by 2010. The MOU addressed NO<sub>x</sub> emissions from locomotives. Under the MOU, NO<sub>x</sub> levels from locomotives are reduced by 67 percent.

On June 30, 2005, Union Pacific Railroad (UP) and Burlington Northern Santa Fe Railroad (BNSF) entered into a Statewide Rail Yard Agreement to Reduce Diesel PM at California Rail Yards with the CARB. The railroads committed to implementing certain actions from

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rail operations throughout the state. In addition, the railroads prepared equipment inventories and conducted dispersion modeling for diesel PM.

In December 2007, CARB adopted a regulation which applies to heavy-duty diesel trucks operating at California ports and intermodal rail yards. This regulation eventually will require all drayage trucks to meet 2007 on-road emission standards by 2014.

Areas where the CAAP went beyond existing regulatory requirements or accelerated the implementation of current IMO, U.S. EPA, or CARB rules include emissions reductions from ocean-going vessels through lowering vessel speeds, accelerating the introduction of 2007/2010 on-road heavy-duty drayage trucks, maximizing the use of shore-side power for ocean-going vessels while at berth, early use of low-sulfur fuel in ocean-going vessels, and the restriction of high-emitting locomotives on port property. Each of these strategies is highlighted below.

***HDV1 – Performance Standards for On-Road Heavy-Duty Vehicles (Clean Truck Program)*** This control measure requires that all on-road trucks entering the ports comply with the Clean Truck Program. Several milestones occurred early in the program implementation, but the current requirement bans all trucks not meeting the 2007 on-road heavy-duty truck emission standards from port property. This program has the effect of accelerating the introduction of clean trucks sooner than would have occurred under the state-wide drayage truck regulation framework.

***OGV1 – Vessel Speed Reduction Program (VSRP):*** Under this voluntary program, the Port requested that ships coming into the Ports reduce their speed to 12 knots or less within 20nm of the Point Fermin Lighthouse. The program started in May 2001. The Ports expanded the program out to 40 nm from the Point Fermin Lighthouse in 2010.

***OGV3/OGV4 – Low Sulfur Fuel for Auxiliary Engines, Auxiliary Boilers and Main Engines:*** OGV3 reduces emissions for auxiliary engines and auxiliary boilers of OGVs during their approach and departure from the ports, including hoteling, by switching to MGO or MDO with a fuel sulfur content of 0.2 percent or less within 40 nm from Point Fermin. OGV4 Control measure reduces emissions from main engines during their approach and departure from the ports. OGV3 and OVV4 are implemented as terminal leases are renewed.

***RL-3 – New and Redeveloped Near-Dock Rail Yards:*** The Ports have committed to support the goal of accelerating the natural turnover of line-haul locomotive fleet to at least 95 percent Tier 4 by 2020. In addition, this control measure establishes the minimum standard goal that the Class 1 (UP and BNSF) locomotive fleet associated with new and redeveloped near-dock rail yards use 15-minute idle restrictors and ULSD or alternative fuels, and as part of the environmental review process for upcoming rail projects, 40% of line-haul locomotives accessing port property will meet a Tier 3 emission standard and 50% will meet Tier 4.

# ATTACHMENT 1

## PROPOSED METHOD OF CONTROL

The goal of this measure is to ensure that NO<sub>x</sub>, SO<sub>x</sub> and PM<sub>2.5</sub> emissions reductions from port-related sources are sufficient to attain the 24-hr federal PM<sub>2.5</sub> ambient air quality standard. This measure would establish targets for NO<sub>x</sub>, SO<sub>x</sub>, and PM<sub>2.5</sub> for 2014 that are based on emission reductions resulting from adopted rules and other measures such as railroad MOUs and vessel speed reduction that have been adopted and are being implemented. These emissions from port-related sources are included in the "baseline" emissions assumed in this plan to attain the 24-hour PM<sub>2.5</sub> standard. Based on current and future emission inventory projections these rules and measures will be sufficient to achieve attainment of the 24-hr federal PM<sub>2.5</sub> ambient air quality standard. Requirements adopted pursuant to this measure will become effective only if emission levels exceed the above targets. Once triggered, the Ports will be required to develop and implement a plan to reduce emissions from port-related sources to meet the emission targets over a time period. The time period to achieve and maintain emission targets will be established pursuant to procedures and criteria developed during rulemaking and specified in the rule.

This control measure will be implemented through a District rule ~~or other enforceable mechanisms~~. Through the rule development process the AQMD staff will establish a working group, hold a series of working group meetings, and hold public workshops. The purpose of the rule development process is to allow the AQMD staff to work with a variety of stakeholders such as the Ports, potentially affected industries, other agencies, and environmental and community groups. The rule development process will discuss the terms of the proposed backstop rule and, through an iterative public process, develop proposed rule language. In addition, the emissions inventory and targets will be reviewed and may be refined if necessary. This control measure applies to the Port of Los Angeles and the Port of Long Beach, acting through their respective Boards of Harbor Commissioners. The ports may have the option to comply separately or jointly with provisions of the backstop rule. ~~As an alternative to a District rule, this measure can also be implemented through a legally enforceable mechanism or instrument that is equivalent in its effectiveness, is submitted for SIP inclusion with full public process, and due consideration to public comments.~~

Amended  
2-1-13  
sm

### Elements of Backstop Rule

*Summary:* This control measure will establish enforceable nonattainment pollutant emission reduction targets for the ports in order to ensure implementation of the 24-hr PM<sub>2.5</sub> attainment strategy in the 2012 AQMP. The "backstop" rule will go into effect if aggregate emissions from port-related sources exceed specified emissions targets. If emissions do not exceed such targets, the Ports will have no control obligations under this control measure.

*Emissions Targets:* The emissions inventories projected for the port-related sources in the 2012 AQMP are an integral part of the 24-hr PM<sub>2.5</sub> attainment demonstration for 2014 and its maintenance of attainment in subsequent years. These emissions serve as emission targets for meeting the 24-hr PM<sub>2.5</sub> standard.



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*Scope of Emissions Included:* Emissions from all sources associated with each port, including equipment on port property, marine vessels traveling to and from the port while in California Coastal Waters, locomotives and trucks traveling to and from port-owned property while within the South Coast Air Basin. This measure will make use of the Port's annual emission inventory, either jointly or individually, as the basis for the emission targets. The inventory methodology to estimate these emissions is consistent with the CAAP methodology. Other sources—i.e. sources that are unrelated to the ports—would not in any way be subject to emission reductions under this measure (including through funding of emission reduction measures, or purchase of emission credits, by the ports or port tenants).

*Circumstances Causing Backstop Rule Regulatory Requirements to Come Into Effect:* The “backstop” requirements will be triggered if the reported aggregate emissions for 2014 for all port-related sources exceed the 2014 emissions targets. The rule may also provide that it will come into effect if the target is met in 2014 but exceeded in a subsequent year. If the target is not exceeded, the Ports would have no obligations under this measure.

*Requirements If Backstop Rule Goes Into Effect:* If the “backstop” rule goes into effect, the Ports would submit an Emission Control Plan to the District. The plan would include measures sufficient to bring the Ports back into compliance with the 2014 emission targets. The Ports may choose which sources would be subject to additional emission controls, and may choose any number of implementation tools that can achieve the necessary reduction. These may include clean technology funding programs, lease provisions, port tariffs, or incentives/disincentives to implement measures. As described below, the Ports would have no obligation under this measure to implement measures which are not cost-effective and feasible, or where the Ports lack the authority to adopt an implementation mechanism. The District would approve the plan if it met the requirements of the rule.

### **RULE COMPLIANCE AND TEST METHODS**

Compliance with this control measure will depend on the type of control strategy implemented. Compliance will be verified through compliance plans, and enforced through submittal and review of records, reports, and emission inventories. Enforcement provisions will be discussed as part of the rule development process.

### **COST EFFECTIVENESS AND FEASIBILITY**

The cost effectiveness of this measure will be based on the control option selected. A maximum cost-effectiveness threshold will be established for each pollutant during rule development. The rule will not require any additional control strategy to be implemented which exceeds the threshold, or which is not feasible. In addition, the rule would not require any strategy to be implemented if the Ports lack authority to implement such strategy. If sufficient cost-effective and feasible measures with implementation authority are not available to achieve the emissions targets by the applicable date, the District will issue an extension of time to achieve the target. It is the District's intent that during such extension, the Ports and regulatory agencies would work collaboratively to develop technologies and implementation mechanisms to achieve the target at the earliest date feasible.

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## IMPLEMENTING AGENCY

The District has authority to adopt regulations to reduce or mitigate emissions from indirect sources, i.e. facilities such as ports that attract on- and off-road mobile sources, and has certain authorities to control emissions from off-road mobile sources themselves. These authorities include the following:

*Indirect Source Controls.* State law provides the District authority to adopt rules to control emissions from “indirect sources.” The Clean Air Act defines an indirect source as a “facility, building, structure, installation, real property, road or highway which attracts, or may attract, mobile sources of pollution.” 42 U.S.C. § 7410(a)(5)(C); CAA § 110(a)(5)(C). Districts are authorized to adopt rules to “reduce or mitigate emissions from indirect sources” of pollution. (Health & Safety Code § 40716(a)(1)). The South Coast District is also required to adopt indirect source rules for areas where there are “high-level, localized concentrations of pollutants or with respect to any new source that will have a significant impact on air quality in the South Coast Air Basin.” (Health & Safety Code § 40440(b)(3)). The federal Court of Appeals has held that an indirect source rule is not a preempted “emission standard.” *National Association of Home Builders v. San Joaquin Valley Unified Air Pollution Control District*, 627 F.3d. 730 (9<sup>th</sup> Cir. 2010)

*Nonvehicular (Off-Road) Source Emissions Standards.* Under California law “local and regional authorities,” including the Ports and the District, have primary responsibility for the control of air pollution from all sources other than motor vehicles. (Health & Safety Code § 40000). Such “nonvehicular” sources include marine vessels, locomotives and other non-road equipment. CARB has concurrent authority under state law to regulate these sources. The federal Clean Air Act preempts states and local governments from adopting emission standards and other requirements for new locomotives (Clean Air Act § 209(e); 42 U.S.C. § 7543(e)), but California may establish and enforce standards for other non-road sources upon receiving authorization from EPA (*Id.*). No such federal authorization is required for state or local fuel, operational, or mass emission limits for marine vessels, locomotives or other non-road equipment. (40 CFR Pt. 89, Subpt. A, App.A; *Engine Manufacturers Assn. v. Environmental Protection Agency*, 88 F.3d. 1075 (DC Cir. 1996)).

*Fuel Sulfur Limits.* With respect to non-road engines, including marine vessels and locomotives, the District and CARB have concurrent authority to establish fuel limits, such as those on sulfur content. As was noted above, fuel regulations for non-road equipment are not preempted by the Clean Air Act and do not require U.S.EPA authorization.

*Operational Limits.* The District has authority under state law to establish operational limits for nonvehicular sources such as marine vessels, locomotives, and cargo handling equipment (to the extent cargo handling equipment is “nonvehicular”). As was discussed above, operational limits for non-road equipment are not preempted by the Clean Air Act. In addition, the District may adopt operational limits for motor vehicles such as indirect source controls and transportation controls without receiving an authorization or waiver from U.S. EPA.

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## REFERENCES

San Pedro Bay Ports Clean Air Action Plan, 2010 Update, October 2010

Southern California International Gateway Project Draft Environmental Impact Report, Port of Los Angeles, September 2011

SCAQMD, 2007 Air Quality Management Plan, Appendix IV-A, June 2007

## ATTACHMENT B

### MARINE PORT COMMITTEE MEETING MINUTES January 18, 2013

#### MEMBERS PRESENT:

Dr. Joe Lyou

Councilwoman Jan Perry (Videoconference)

Mayor Pro Tem Judy Mitchell (Teleconference – Listened Only)

#### AQMD STAFF:

Barry Wallerstein, Executive Officer

Kurt Wiese, General Counsel

Barbara Baird, District Counsel

Elaine Chang, Deputy Executive Officer

Chung Liu, Deputy Executive Officer

Henry Hogo, Asst. Dep. Executive Officer

Matt Miyasato, Asst. Dep. Executive Officer

Susan Nakamura, Planning & Rules Manager

Peter Greenwald, Senior Policy Advisor

Philip Fine, Planning & Rules Manager

Randall Pasek, Planning & Rules Manager

Sam Atwood, Media Relations Manager

Michael Krause, Program Supervisor

Ed Eckerle, Program Supervisor

Gwen Cole, Sr. Administrative Secretary

#### INFORMATION/DISCUSSION/ACTION ITEMS:

- 1. Overview on the 2012 AQMP Measure IND-01 – Backstop Measure for Indirect Sources**  
Henry Hogo, Assistant Deputy Executive Officer, provided an overview of the proposed AQMP control measure IND-01. He indicated that the measure would be triggered if port-related emission targets that are in the 2012 AQMP are not met for 2014 or later. The proposed concept would be a requirement for the Ports to prepare an emissions reduction plan committing to actions to achieve additional emission reductions from port-related sources. The actions to be developed would be actions that are within the Port's legal authority, are technically and operationally feasible, and are cost-effective. The specific provisions of the measure will be developed through a rulemaking process.

Mr. Hogo indicated that the emissions related to the two Ports (when combined) are about 22.5 tons/day of PM<sub>2.5</sub> equivalent emissions (combination of NO<sub>x</sub>, SO<sub>x</sub>, and PM emissions) in 2008. He provided a comparison of the magnitude of the port-related emissions with other facilities in the South Coast Air Basin. Specifically, emissions from LAX are around 1.3 tons/day, a large refinery around 1.3 tons/day, and two electric utilities both under 1 ton/day. Given the collective efforts of the Ports and regulatory agencies, port-related emissions will decrease to around 5.5 tons/day in 2014. Mr. Hogo indicated that the proposed backstop

measure is to ensure that the significant emission reductions from 2008 to 2014 (assumed in the 2012 AQMP) are achieved.

Mr. Hogo discussed some of the reasons for having a backstop measure citing that the emission reductions are based in part on voluntary programs. Should participation in the voluntary program decrease, there would be emission reduction benefits foregone. On-going and potential litigation on existing air regulations could result in emission reductions foregone. He cited the prior litigation from the Pacific Merchant Shipping Association (PMSA) on CARB's low-sulfur marine fuel regulation and the current American Trucking Association (ATA) challenge of the Ports' Clean Truck Program. Recently, a tanker fleet has requested U.S. EPA to consider an approach to convert their tanker vessels to run on LNG. Such conversions will have emissions reduction benefits. However, the fleet is requesting that they be allowed to continue to use 2.2% sulfur marine fuel during the four years that it will take to convert the tanker vessels to LNG. Such allowance will result in greater emissions. Lastly, Mr. Hogo indicated that the AQMP relies on economic forecasts to project future year emissions. Given the uncertainties in the forecasts, any actual increase over current projections could lead to greater emissions.

On January 9, 2013, the Ports provided an alternative approach to IND-01 in the form of a proposed "Memorandum of Agreement" (MOA). The proposed MOA would be in lieu of the backstop measure and would have the Ports and the air agencies (AQMD, CARB, and U.S. EPA) as parties to the agreement. The Ports would develop an updated diesel particulate matter inventory for 2014. If the targets are not achieved, the Ports and air agencies would agree to work collaboratively to develop a mutually agreed upon emissions reduction plan. The MOA would be entered with the express condition that IND-01 or "similar" rules will not be applied to the Ports. Mr. Hogo indicated that the proposed MOA does not contain any commitment to achieve any emission reductions, even if cost-effective and feasible for the Ports to implement. In addition, the MOA would terminate if a backstop rule or "similar" indirect source rule is developed.

In summary, staff recommended that the AQMD Governing Board adopt Control Measure IND-01 and include the following language:

*"As an alternative to a District rule, this measure can also be implemented through a legally enforceable mechanism or instrument that is equivalent in its effectiveness, is submitted for SIP inclusion with full public process, and due consideration to public comments."*

In addition, the implementation approach (i.e., rule or other enforceable mechanism) for the measure will be determined through a public process.

Kurt Wiese, General Counsel, addressed the Ports' argument that the Board does not have legal authority to adopt the Port Backstop Rule. He stated that the Board has authority to regulate the Ports as an indirect source of emissions. Indirect sources are defined in the Clean Air Act as sources that attract mobile sources, i.e. trains, trucks, locomotives and ships. Examples are the warehouses located in the Inland Empire, the railyards throughout the district and, the Ports.

Section 110(a)(5)(C) of the Federal Clean Air Act authorizes states to include indirect source provisions in their State Implementation Plan. In California, the Legislature has delegated to the local air districts the authority to adopt indirect sources. There are two Health & Safety Code provisions that apply. Health & Safety Code §40716(a)(1) authorizes air districts to “reduce or mitigate emissions from indirect or area-wide sources.” Section 40440(b)(3), which applies specifically to the South Coast District, authorizes the Board to adopt “indirect source controls in those areas of the South Coast District in which there are high level, localized concentrations of pollutants,” for example, the Ports. In summary, there is ample authority for the Board to adopt an indirect source control measure affecting the Ports.

Dr. Lyou asked Mr. Weise to review the San Joaquin Valley case law on this matter as a point of clarification.

Mr. Wiese stated that there was a 2010 Ninth Circuit decision regarding the San Joaquin Air District adoption of an indirect source control measure that affected real estate developments in the San Joaquin Valley. The developers had to develop approaches to reduce both construction emissions and operational emissions. San Joaquin was sued by the National Association of Home Builders who claimed that these were not really indirect sources, and that what San Joaquin was really doing was regulating the direct sources of emissions at the building sites. The Association also argued that Section 209 of the Clean Air Act preempted the San Joaquin regulation. The Ninth Circuit said that since the San Joaquin District was regulating the building developments as a whole and not specifically regulating individual sources that the San Joaquin regulation would stand. The Supreme Court refused to review it.

Councilwoman Jan Perry asked Mr. Wiese if staff had met with the Ports and had any informal communications with them. She asked if the Ports had given any response to the AQMD position and whether staff provided any response to the position from the Ports.

Mr. Wiese stated that staff had a meeting with the Ports on January 9, 2013 and the discussion was more general. At that meeting, the Ports presented the MOA that Mr. Hogo described and staff committed to get back to them with reaction to the MOA.

Dr. Barry Wallerstein, Executive Officer, added that as a result of the Ports proposing an MOA, while staff does not believe the content of the MOA as drafted would suffice, staff is proposing for the February 1, 2013 Governing Board meeting, to add language into the control measure that would allow an option of an enforceable agreement that went through a full public process and will recommend that the measure be placed into the SIP. This will give the Governing Board discretion, as staff develops a set of backstop requirements, regarding the form in which the backstop requirements would ultimately be enacted by the Governing Board.

Councilwoman Perry commented that from informal communications with the Ports, they are concerned about the proposed modification and they probably do not agree with the legal precedent. Staff needs to be very clear about where the Ports are on the record and staff's response thereto to actually formulate how she votes.

Dr. Wallerstein mentioned that there were representatives from both Ports present at the meeting and they would be speaking under public comment. Dr. Wallerstein noted that there are two issues. One is the substance of what a backstop should look like. Thus far, the information staff has received from the Ports, whether it was the resolution language that was proposed before the first of the year or, more recently, the Memorandum of Agreement, the basic content is, if at a later date there is a problem, then all the parties would agree to meet and collectively develop a solution to the problem. Whereas, what staff has been asking is, if there is a problem that evolves, the Ports would take proactive action within their legal authority, within feasibility, including cost effectiveness, to do what they can do under their authority to do their fair share, which is no different than what has been asked of every other emissions source in the Basin. Because the region's air pollution problem ultimately becomes a zero sum gain when any sector or participant is not doing what they are able to do, the burden shifts to others.

Dr. Wallerstein indicated that the Ports have been active in recent years in developing programs and actions to reduce emissions and staff has had a good partnership. However, the Ports remain very large indirect sources of air pollution and there is a need to have the Ports continue to do what they can under their legal authority, cost effectiveness, and technological feasibility.

Dr. Lyou asked Counsel for clarification on an issue that was not addressed in the staff presentation. Does the difference of whether or not we have a Memorandum of Agreement or we have something that is or is not in the SIP come down to enforceability and the public's ability to enforce. Mr. Wiese responded that staff discussed including the MOA in the SIP, which would allow it to achieve the same level of enforceability.

Dr. Lyou asked if there was a precedent for that and, if it were submitted into the SIP, would it then become enforceable by members of the public like any other part of the SIP. Mr. Wiese replied yes to both questions.

Dr. Lyou asked would that have to or not have to be part of the AQMP? Dr. Wallerstein responded that staff submits individual regulations into the SIP. He does not know of any precedent why it could not be submitted, even if not part of the 2012 AQMP.

Dr. Lyou noted that, based on his conversation with the Ports, it seemed to be a very key issue to them whether or not it becomes part of the AQMP and whether or not an indirect source rule of any kind is actually adopted.

**Other Business:** None

**Public Comment:**

**Dr. Robert Kanter, Managing Director for Environmental Affairs & Planning, Port of Long Beach**, thanked staff for working with them, particularly the committee for listening to what they had to say. He commented that the Ports were very appreciative when at the last meeting, the Board continued this item and asked the staff to work together. The direction was for staff to come back to report on the legal basis and need. They disagree on both factors as presented by staff.

First, they believe there is no need since for the past six years the Ports have implemented the Clean Air Action Plan, which was developed in collaboration with not only AQMD, but EPA, CARB and local representatives. It was through the Clean Air Action Plan that the Ports have an inventory every year and track their progress. The Ports' 2011 inventory showed that they have already achieved 73% reduction in diesel particulate. The Ports do not have numbers yet for 2012, but the numbers will be even more encouraging. The Ports' goal was to achieve 72% reduction by 2014 and they have already exceeded this level and are on the way to their goals for the future. The Ports have projected that their emission reductions will be an 82% reduction by 2014. The Ports have already exceeded their 2014 goal, which is part of the justification for lack of need since the Ports are actually achieving this already.

Dr. Kanter noted the importance of the fact that most of this action was initiated by the Ports and was backed by regulations from CARB following their actions. The Ports took early action and now 97% of those emission reductions by 2014 will be covered by existing regulations. For the remaining 3%, the Ports are now actually achieving those reductions primarily due to the Vessel Speed Reduction Program, which has been highly subscribed in excess of 94% of compliance with industry through a voluntary effort, incentivized by the Ports.

Dr. Kanter added that the Ports proposed a very good compromise that they believe will get the staff where they want to be at a comfortable level. They believe it is a reasonable, collaborative effort. It lets all of us do what we can do within our legal authority and, therefore, be successful and continue to make the progress we have made.

**Mike Christensen, Deputy Executive Director, Port of Los Angeles**, thanked staff for reaching out to them over the past weeks and engaging them in a discussion on this super critical matter. He concurs with Dr. Kanter's comments. He believes that, if IND-01 were to go forward as staff is proposing, it would have a chilling effect on their ability to push improvements in air quality. Further, to Counsel's suggestion, if the Ports are regulated as an indirect source, they will fight it vigorously. The collateral damage from that battle would be the wonderful working relationship that they have established with staff and the tremendous achievements they have been able to make over the past few years.

The Ports feel strongly that designating them as an indirect source would jeopardize the voluntary and collaborative relationship they have with their industry. They are not a regulator and they cannot play that role with their tenants. They rely on their proprietary rights with negotiations and all the leverage they can put forward as a port authority, but they are not a regulator.

Finally, Mr. Christensen noted that the Ports have a proven track record of results. If the proposed MOA does not work, it does not preclude staff from making those regulations in the future. He reminded the committee that the Ports have been able to leverage a large level of funding for their environmental improvement programs, largely on the fact that they are voluntary. Once they become regulated mandates, much of that funding goes away.

Mr. Christensen added that in total, the Ports value the relationship. They believe they have a proven track record. They disagree, respectfully, with Counsel's assessment of the indirect source



rule. He mentioned that their City Attorney would be glad to reach out and have discussions regarding the legal opinions. IND-01 as suggested is not the right way to go and, in fact, would likely have the exact opposite effect that they all want. They are public servants and are very proud of the emission reductions they have made at the Ports. They are totally committed to the goals that Dr. Kanter presented and think the best way to go is the MOA approach at this time.

**Heather Tomley, Port of Long Beach**, provided additional comments to build on to the comments that Mike Christensen and Robert Kanter provided. The multi-agency agreement that the Ports provided was offered as a way to recognize the comments that they were hearing from the AQMD Governing Board and staff that was needed to make sure staff felt comfortable going forward. The Ports listened to those comments and provided a concrete plan and response that would address those issues specifically. They developed the agreement to provide a process that would commit us all to continue to work together and make sure they are achieving the commitments. The response the Ports received back from staff yesterday, that the agreement would continue to be part of the backstop rule and the AQMP, is not acceptable and does not address the concerns they have.

Ms. Tomley noted that they are committed to the process that they have in place and the reductions they have committed to make. But, they think it needs to be done as part of a cooperative process and continue on in the successful path that they have had and not have it be a regulatory command and control sort of process. They would like to keep it in the collaborative spirit that they have been able to establish. She mentioned that CARB stated in their Goods Movement Plan that no single entity can solve this problem in isolation. They were referring to addressing port emissions. The Ports whole-heartedly agree that all the agencies have a part to play in this. CARB has moved forward aggressively with a large number of regulations that have helped to address specific sources that are in the Ports. That partnership, the Ports working with the different agencies, CARB, AQMD and EPA is critical for them to continue to move forward. They believe that partnership, the multi-agency approach, is essential for them to continue to have the success that they have had.

**Frank Lopez, Los Angeles Area Chamber of Commerce**, commented that the Chamber actively participated in providing input in the development of the 2012 AQMP throughout the entire process. They were opposed to several aspects of the final AQMP, but of those, this was by far the most concerning for the communities of Los Angeles. The Ports of Long Beach and Los Angeles are the backbone of the regional economy and employs thousands of people and thousands of businesses depend on them. They operate a very highly competitive industry. The Chamber believes that the control measure as proposed by staff imposes costs for their customers and businesses and that could compromise the regional economy. They also believe that this measure is unwarranted and unnecessary. The Ports have already made significant progress in reducing emissions at the Ports over the past six years under the Clean Air Action Plan. The Chamber understands there may be a need to reduce emissions further, but they believe this is the wrong approach. They believe it undermines the good-faith efforts of the Ports and other industries from voluntarily setting emissions reduction goals in the future. The Chamber wants to exclude IND-01 from the 2012 AQMP and think the MOA proposed by the Ports would suffice. It is a better approach and would build on the success of the Clean Air Action Plan.

**Mike Lewis, Construction Industry Air Quality Coalition and the Business Federation**, commented that they do not support an indirect source approach to controlling emissions. Blaming

someone for someone else's emissions is never a sound policy to get at the source of emissions and reductions that staff is looking for. His members recognize that the Ports are a significant contributor to the economy and to jobs in this region. They generate over a million jobs in this region and three and half million jobs nationally. It is important to keep the Ports competitive, and it is also important to reduce emissions from the activities of the Port. However, as part of that competitiveness requirement, staff needs to recognize that before long there is going to be options for shipping in and out of the Ports, particularly when the Panama Canal is widened and those emissions and jobs can simply go to another Port. It should not be staff's objective to reduce emissions by merely moving them somewhere else in the country. It is going to require a delicate balance in terms of how the goals are achieved and still maintain the economic vitality that the Ports bring to the region. They would hope that staff would approach it in that regard and look to the idea of a memorandum and enforceable agreement with the Ports that would achieve the goals without having to go the indirect source route.

**T. L. Garrett, Pacific Merchant Shipping Association**, commented that they support the Ports' position in terms of the indirect source measure. It is not required to meet the goals and objectives of emission reductions. Their members have participated in the Clean Air Action Plan largely because it is a voluntary program and it enables them to both achieve these objectives and maintain a positive business outlook, that they are good stewards of the environment. That is a valuable aspect to his member companies. The voluntary aspect of moving forward is a key point. The IMO Emissions Control Area was not described properly in staff's presentation. One of the reasons his organization is opposed to the CARB regulation was not that they were opposed to the low-sulfur fuel. They were opposed to who was going to administer that regulation. They believe it should be done at the international level. The ECA is now in effect, up to 200 nautical miles. There is a 1% sulfur limit on all vessels coming into those waters. It reduces further to 0.1% in 2015. Not only are these measures backstopped at the state level, they are backstopped at the federal and international level as well. Finally, Mr. Garrett mentioned that he has one Board Member who famously says "I can't manage anything I can't measure." There is a management capability here. There is an annual Port report card and an annual emissions inventory. By simply monitoring those progress points, staff can assure itself and its Board Members that these objectives will indeed be made.

**Candice Kim, Coalition for Clean Air**, first noted that several advocates wanted to attend the meeting who are from the harbor area, but with the distance and commitment of time, they were not able to make the trip to AQMD Headquarters. She hopes that in the future, staff might consider a remote access location or holding the meeting at the Ports.

Ms. Kim commented that the Coalition for Clean Air is concerned that the use of an MOA may pose a risk of eroding public participation in the public process. They have not had much time to review what is being presented and have only seen the staff presentation and none of the additional details. The public depends upon the protection of plans like the AQMP to protect public health through the use of mandatory and enforceable measures. She noted that people keep talking about not seeing the need for a regulation. What is needed is a certainty that our goals are met for public health. That is an important goal and a goal that should be first and foremost in the minds of the Board Members as they consider an MOA.

In addition, the Coalition is concerned about any agreement that would tie the hands of other agencies to regulate Port pollution. That is very serious to them. They are also concerned that the MOA was drafted with a lack of stakeholder input from environmental organizations. The public has been excluded from the discussions on the MOA and they have not been able to read the document. The Coalition strongly believes that the 2012 AQMP must include the mandatory Port backstop measures as drafted, although they will review what will be put forward. The Port backstop measures are key to our forward progress and they urge them to be included in the plan. Transparency in the public process must be upheld.

**Morgan Wynn, Natural Resources Defense Council**, mentioned that the NRDC submitted a comment letter on behalf of themselves and a wide range of other environmental, public health, environmental justice, and community groups expressing their support for a strong backstop rule. They also support inclusion of a backstop rule in the SIP. The Ports have been working very hard over the past several years to achieve some great reductions and to protect the community's health and we all applaud them for that and are excited to continue working with them to continue that progress. However, now that the Ports are so strongly opposed to being required to do what they have already promised to do, it feels like an undermining of that relationship and uncomfortable in the nature of that relationship. They were happy to hear the concerns staff has with the agreement because they share those same concerns.

**Chris Cannon, Director of Environmental Management, Port of Los Angeles**, thanked the AQMD staff for reaching out and communicating with them. He pointed out that the Memorandum of Agreement the Ports submitted was a draft. It was an effort on their part to reach out to staff and let them know what the Ports' goals were and that they would like to try and meet staff's goals. They have no problem with finding a way to submit it for the SIP as long as it occurs outside of the AQMP process. They have no problem with it being public, and indeed, the development of an MOA, and in any ultimate subsequent plans. They do not have a problem with having language in it that says the Ports will maintain their emissions inventories. To the extent that, if there is a problem or a shortcoming, they will initiate a process to rectify the shortcomings and sit down and talk with staff to come up with something that is mutually agreed upon. They will go back to their Boards and, once their Boards approve a plan, staff can hold them to it. Mr. Cannon wanted staff to know that this is not something that they just want to run off and say "don't worry, trust us." They want to have a collaborative process, work closely with staff, and maintain the kinds of success that they have had. Finally, Mr. Cannon noted that he heard someone say that they would preclude other regulations, and he did not understand how that was possible. That is not their intent and, if there is a way in which that would occur, certainly they would be happy to talk about.

Dr Wallerstein asked Mr. Cannon if the Ports do not oppose putting the MOA in the SIP and if the Ports believe the MOA can commit to maintaining the emission reductions that were previously committed to, what is the problem with the measure as drafted; revised and now revised a second time to leave open an MOA approach in lieu of a regulation, provided that MOA is enforceable and developed through a public process.

Mr. Cannon responded that the way the Ports interpret what staff presented is that they would be part of an indirect source rule and they do not want to be regulated as an indirect source. They strongly disagree with that.

Dr. Wallerstein recommended that some time in the next week, the AQMD and Port staffs have a phone call to talk more detail. He added that staff could bring the Board a regulation, or staff could bring the Board an enforceable agreement that the Board was willing to accept in that form and submit it into the SIP. Staff's intent would be that the enforceable agreement would have the same substance that a regulation would have and that the public gets a voice in developing that MOA the same way they would in a regulation. Dr. Wallerstein added that staff's proposal to add the language regarding other enforceable mechanisms, is intended to leave the door open for moving forward.

Dr. Lyou noted that this was where the conversation ended when he met with the Ports. The issue of it being done through an indirect source rule and put in the AQMP was paramount in the concerns of the Ports. The substance was pretty much on the same page. It sounded like what staff wanted the indirect source rule to deliver in terms of guarantees. The Ports were "even fine if it ends up in the SIP."

Councilwoman Perry encouraged the Ports in the context of their discussions with staff to talk about the kinds of zero emission projects they have in the pipeline that may be endangered by being put in the broader context of the AQMP. She recognized and appreciated their very gracious words about working through this and asked them to go back and give it another shot.

Dr. Lyou noted that there is a greater level of understanding at this point than there was prior to the meeting. There were some issues in terms of the need and necessity that may be mute given this level of understanding. There was a comment about meeting at the Ports or whether that would be possible. He is always supportive of that idea and knows that AQMD Governing Board has met at the Ports in the past. It was his understanding that staff tried to meet at the Ports in February.

Dr. Wallerstein commented that it did not work out for February, but to the extent that there is an MOA or, if not an MOA, a regulation, Dr. Lyou could propose on February 1, when it comes to the Board for approval, that we meet at the Port.

In his conversations with the Port representatives, Dr. Lyou told them that he thought this issue was relatively less important than a whole host of other things that they have on their plate, from the very major projects like SCIG, ICTF and the I710 Freeway expansion to the opportunity to build a zero-emission freight infrastructure at the Ports and to do it in a way that makes sense for business and saves businesses money and makes the Port operations more efficient and provides an economic engine for those people who are involved in building and running it. A zero-emission freight transportation system is much more important in getting these reductions.

Dr. Lyou understands what the Ports are saying about how far they have gotten and how far they are going to get and that they can reach these goals. To some extent, that they can reach these goals, the whole issue is moot. We have to keep in perspective the bigger issues and the ways in which we can and will be working together with the Ports. If this ends up in litigation over this particular issue, it might be a fight that has to happen. But, he also hopes that it is not one that has a chilling effect or prevents us from taking on the other issues we need to take on.

Dr. Lyou noted that the minutes from this meeting will be put in the Board package and the item will remain on the agenda for the February 1 Board meeting.

Dr. Wallerstein mentioned that staff's proposal will stay on the agenda for February 1, unless directed otherwise. In terms of any modification to the staff recommendation, comments are always taken up until the Board meeting. If the public or the environmental or community groups or the Ports or the chamber or anyone else presents compelling information that would change staff's recommendation, staff would modify their recommendation the day of the Board meeting and any public would have an opportunity to comment.

Dr. Lyou mentioned that he offered to the Ports, and would offer to the environmental organizations as well, his help to facilitate a conversation to get closer to being on the same page.

**Adjournment:** The meeting adjourned at 1:50 p.m.