

September 30, 2019

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Dear Mr. Cordero and Mr. Seroka:

I am writing to offer the California Air Resources Board (CARB)'s partnership and encouragement on reducing emissions from trucks as the Ports continue to move forward to pursue air quality improvements. The Ports have played a critical role in substantially reducing emissions and associated health impacts to neighboring communities, but there is still much that can and should be done. Air pollution from the Ports continues to affect State and local air quality and public health. I understand the Ports are considering next steps on encouraging the use of cleaner vehicles at their facilities.

The California Air Resources Board (CARB) is confident that the Ports can take more action to accelerate the adoption of zero emission and low nitrogen oxide (NOx) emitting vehicles and equipment, especially for sources that travel through neighboring communities. This near-term action is critical to address localized health risk by further cutting diesel particulate matter emissions beyond the 85 percent reduction target in the 2017 Clean Air Action Plan. This is consistent with the need to help achieve ambient air quality standards by reducing NOx and to lower community air pollution burdens, and to meet the Ports' goal of 100 percent zero emission trucks by 2035.

One important step that the Ports can take is to implement gate rates or incentives based on the emissions levels of trucks entering the Ports – prioritizing zero-emission trucks, and also differentiating low-NOx trucks from conventional combustion vehicles. Providing these incentives would directly address localized health risks by helping to further reduce emissions of NOx, particulate matter, and other pollutants in local communities affected by truck traffic.

In CARB's view, the Ports have the legal authority to set in-use requirements for accessing their private facilities in this manner. The Ports may use tools available to any private company, and, like any participant in the freight market, may develop environmental incentives that make the ports better industrial citizens and hence more attractive to businesses. As the Supreme Court held considering past Port efforts, the Ports may act as market participants through contractual and incentive means to reward the use of clean vehicles (provided, of course, that they do not attach criminal sanctions to violations of their incentive structures). See *American Trucking Associations, Inc. v. City of Los Angeles* (2013) 569 U.S. 641, 651–54. These tools can and should include incentives for cleaner vehicles, especially zero-emission vehicles, or the exclusion of certain vehicles from the Ports for failing to abide by voluntary agreements between the Ports and the vehicles operating at its facilities. (*Id.* at p. 654.) Use of tools available to a private company would not be preempted by any federal law concerning interstate commerce, such as the Federal Aviation Administration Authorization Act of 1994. (*Id.* at p. 654.)

CARB recognizes that the Ports may be viewed as government bodies, but the federal Clean Air Act is clear that governments, too, may set appropriate in-use regulations and requirements. (42 U.S.C. § 7543(d)) Such in-use and locality-based rules are rooted in the general authorities inherent to local government. Moreover, localities are free to set in-use rules for their own fleets or fleets they control. See *Engine Manufacturers Association v. South Coast Air Quality Management District* (9th Cir. 2007), 498 F.3d 1031.

Given these authorities, CARB believes the Ports would prevail in any challenges to properly designed in-use incentive structures. We are happy to work with you to further explore workable designs for such programs.

The Ports should incentivize zero-emission vehicles in particular. Zero-emission vehicles offer the greatest public health and climate change benefits. One potential option to encourage zero emission vehicle use at the ports is to provide rebates to zero emission vehicles that enter the ports.

The Ports could fashion gate rates by referencing NOx standards that some trucks already meet. For instance, in determining at what NOx levels to set different gate rates, the Ports could consider using the NOx levels in CARB's Optional Low NOx Emissions Standards regulation (Optional Low NOx regulation) (Cal. Code Regs., tit. 13, § 1956.8). The Optional Low NOx regulation establishes the next generation of optional low NOx standards for 2015 and later Model Year (MY) heavy-duty engines. The regulation consists of three optional NOx emission standards: 0.1 g/bhp-hr, 0.05 g/bhp-hr, and 0.02 g/bhp-hr. These three standards are 50 percent, 75 percent, and 90 percent lower, respectively, than the current mandatory NOx emission standard of 0.2 g/bhp-hr. Manufacturers can elect to certify to any of the optional NOx standards, or instead to certify to the existing mandatory 0.2 g/bhp-hr NOx standard. In the past two years, CARB has already certified trucks that meet the optional NOx standards in the Optional Low NOx regulation.

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Any incentive structure should also further drive greenhouse gas reductions by requiring the use of renewable fuels.

The Ports have been worldwide leaders in reducing emissions, and developing truck gate rates that prioritize zero emission, while also providing appropriate benefits for low NOx trucks. They have an opportunity to continue that role. We will be prepared to discuss this opportunity further with you and your teams.

If you have any questions, please call me at (916) 445-4383, or have your staff contact Bonnie Soriano, Chief, Freight Activity Branch, Transportation and Toxics Division, at (916) 322-8277, or by email at [Bonnie.Soriano@arb.ca.gov](mailto:Bonnie.Soriano@arb.ca.gov).

Sincerely,



Richard W. Corey  
Executive Officer

cc: *(via email)*

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