

MOBILE SOURCE COMPLIANCE PLAN

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BACKGROUND

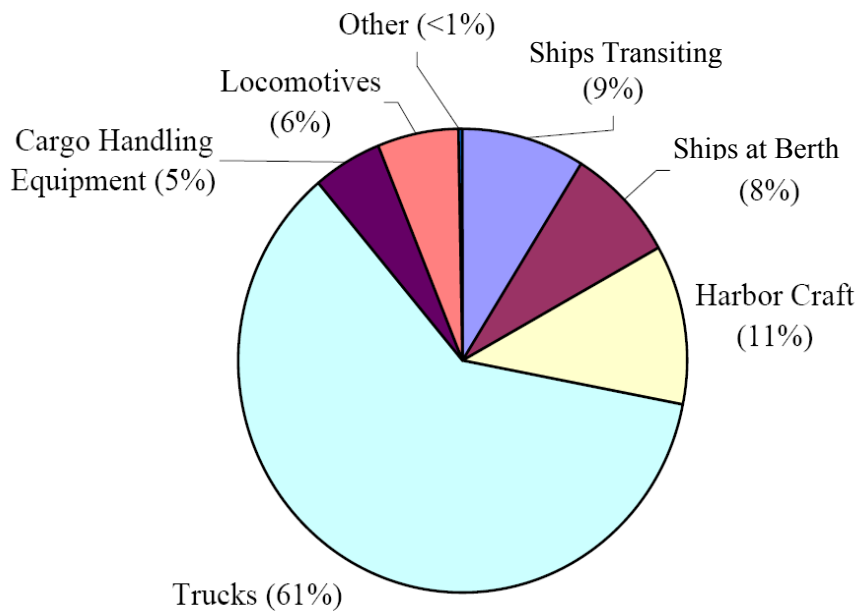
In 1998, the California Air Resources Board (CARB) identified diesel particulate matter (PM) as a toxic air contaminant (TAC). CARB conducted an assessment of the need for regulations and in 2000, adopted a *Risk Reduction Plan to Reduce Particulate Matter Emissions from Diesel-fueled Engines and Vehicles*. The plan included recommendations for control measures and a goal of reducing California's diesel PM emissions and associated cancer risks by 85% by 2020 from 2000 levels. Subsequently, in April 2006, CARB adopted its *Emission Reduction Plan for the Ports and Goods Movement in California* which proposed adopting regulations to reduce PM and ozone precursor emissions from ships, commercial harbor craft, cargo handling equipment and trucks.

In 2004, the Air District began the Community Air Risk Evaluation (CARE) Program to evaluate and reduce health risks from TACs in the Bay Area, with an emphasis on diesel PM. The results of CARE analyses show that diesel PM accounts for over 80% of the TAC cancer risk and that on-road and off-road mobile sources are responsible for the majority of the risk. Subsequent District studies included a partnership with CARB, the Port of Oakland and the Union Pacific Railroad to develop a comprehensive health risk assessment to evaluate the health risks from diesel PM in West Oakland. This study determined that the West Oakland community is exposed to diesel PM concentrations that are nearly 3 times higher than the average background diesel PM in the Bay Area (with about 1,200 in a million excess cancers over a 70 year lifespan).

In response to these studies and to implement the plans, CARB adopted a series of mobile source regulations to reduce diesel PM emissions. Diesel particulate matter poses the largest air toxic health risk to Bay Area residents. The goal of the District's Mobile Source Compliance Plan is to reduce diesel particulate matter health risk in CARE impacted areas, with special focus on the Port Of Oakland and West Oakland, using compliance assistance tools and a robust enforcement program.

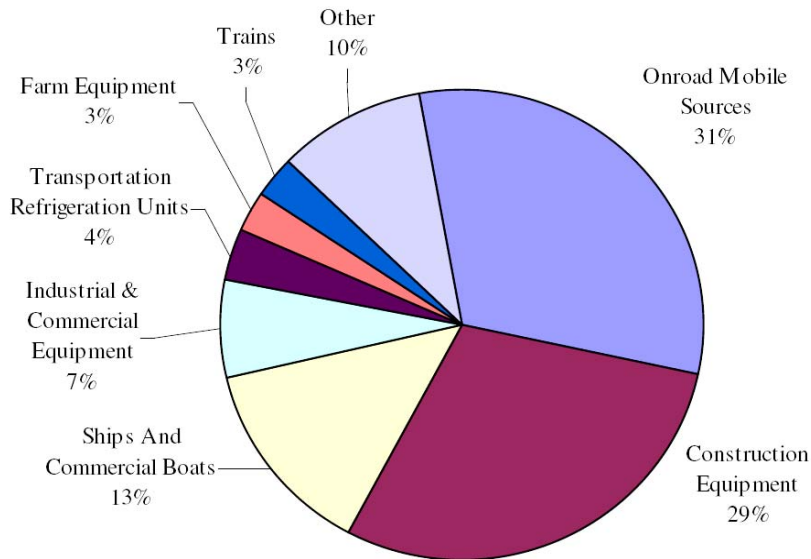
DIESEL PM AND MOBIL SOURCE(S) IMPACTS ON CARE AREAS

The District has prioritized its current efforts and those planned based on the overall level of emissions and their contribution to elevated health risk posed by a particular mobile source category. For example, in West Oakland, the diesel PM emissions from mobile source categories is reflected below.



Sources of population-weighted cancer risk from diesel PM, based on West Oakland Health Risk Assessment adjusted to reflect BAAQMD truck-traffic survey findings

For all other CARE areas, ships are largely not present. However, trucks, off-road diesel vehicles and equipment, and to a lesser extent, boats and locomotives, will pose diesel PM risks to these impacted communities. The chart below depicts diesel PM and other emissions throughout the entire Bay Area from mobile source categories.



CARE Area Cancer Toxicity-Weighted Emissions: Bay Area (BAAQMD, 2005)

MOBILE SOURCE RULES SUBJECT TO THE PLAN

This Mobile Source Compliance Plan (MSCP) lays out the District's comprehensive strategy for enforcement of specified CARB air toxic control measures (ATCMs), regulations and related mobile source statutes and/or agreements (collectively termed "rules"). This MSCP is a "living" document and will change as needs arise and as mobile source rules are revised and augmented. For some of these rules, District implementation has been underway for a few years.

Since 2003, District staff have been enforcing Health and Safety Code section 40720, which restricts idling by port trucks outside terminal gates at the Port of Oakland, the only port in the Bay Area to which the idling restrictions apply. These restrictions were added to state law in 2002 by AB 2650, authored by then Assemblymember Alan Lowenthal. BAAQMD is the only air district in the state that has conducted enforcement actions pursuant to the statute.

Additionally, District staff have been enforcing the CARB Statewide Railroad MOU¹ since September 2006 along with CARB staff. This rule limits idling of diesel locomotives at specified railyards in the Bay Area. Staff have also been conducting inspections pursuant to the CARB Portable Equipment Registration Program ("PERP", a voluntary registration program for portable diesel engines and equipment units) since January 2007 throughout the Bay Area. To complement these mobile source activities, staff have evaluated CARB regulations and ATCMs and included rules for enforcement in the MSCP for the source categories which pose the highest diesel PM risk. See Table 1, following page.

Also included is the ATCM which prohibits Onboard Incineration on Cruise Ships and Oceangoing Ships within 3 nautical miles of the California coastline; this rule ensures that incineration activities from ships do not pose additional health risks to Bay Area communities.

For further information, see Appendix A (Summary of Rules subject to the Mobile Source Compliance Plan).

¹ On December 21, 2006, to implement the MOU, the Air District, CARB, and the railroads (BSNF and UPRR) entered into an agreement, the "Bay Area Implementation Protocol for ARB/Railroad Statewide Agreement."

Table 1 - BAAQMD Mobile Source Compliance Plan

	RULE (MOU/Statute/Regulation/ATCM)	REQUIREMENTS	MODE	Applicable Areas	BAAQMD Implementation Date
1	Railroad Strategies Statewide MOU & BAAQMD Protocol	Idling Time and Excessive Visible Emissions Restrictions	Locomotives	Specified Railyards	Ongoing Since 2006
2	Port Truck Terminal Idling H&S Code 40720 AB 2650, Lowenthal	Idling Time Restrictions while queuing	Trucks	Port of Oakland	Ongoing Since 2003
3	Heavy-Duty Drayage Trucks	Engine emissions standards Phase-out of specified engines Reporting Requirements	Trucks	Ports and Intermodal Railyards	Outreach: 2009 - 4th QTR Enforcement: January 1, 2010
4	Commercial Vehicle/Sleeper Berth Idling	Idling Time Restrictions	Trucks	Throughout Bay Area	2010 - 1st QTR
5	In-Use Off-Road Diesel Vehicles (In-use Construction Equipment)	Idling Time Restrictions Fleet emissions standards Greater than or = 25 HP	Trucks & Equipment	Throughout Bay Area	2010 - 1st QTR
6	"PERP" Registration Program	Voluntary registration program	Equipment	Throughout Bay Area	Ongoing Since 2007
7	Portable Engines	Emissions standards Phase-out of specified engines Greater than or = 50 HP	Equipment	Throughout Bay Area	2010 - 1st QTR
8	Mobile Cargo Handling Equipment	Emissions standards Phase-out of specified engines Reporting Requirements	Equipment	Ports and Intermodal Railyards	2010 - 2nd QTR
9	Transport Refrigeration Units	Certified engines emission stds Use of DPM filters State registration	Equipment	Throughout Bay Area	2010 - 3rd QTR
10	Commercial Harbor Craft	Emissions standards Phase-out of specified engines State registration	Boats	Adjacent to the Bay, Coastal areas & within 24 nautical miles of the California coastline	2010 - 2nd QTR
11	Ocean-Going Vessels While at Berth	Reduction of at-berth emissions using shore power & other strategies	Ships	Adjacent to the Bay, Coastal areas & within 24 nautical miles of the California coastline	2010 - 2nd QTR
12	Fuel Sulfur and Other Operational Requirements for Ocean-Going Vessels	Low-Sulfur Fuel Requirements Recordkeeping Requirements	Ships	Adjacent to the Bay, Coastal areas & within 24 nautical miles of the California coastline	2010 - 2nd QTR
13	Limiting Onboard Incineration on Cruise Ships and Oceangoing Ships	Prohibits Incineration Recordkeeping Requirements	Ships	Adjacent to the Bay, Coastal areas & within 3 nautical miles of the California coastline	Ongoing Since 2007

LEGAL AUTHORITY

The District has a strong stationary source enforcement program which spans more than 5 decades. However, mobile source enforcement has traditionally been under CARB's purview. Only recently, CARB's diesel PM air toxic control measures (ATCMs) allowed air districts the opportunity to have a larger role in mobile source regulation enforcement.

Pursuant to Health and Safety Code sections 39002 and 4000, the Air District's primary responsibility is the control of air pollution from all sources other than vehicular sources. Furthermore, pursuant to Health and Safety Code section 40001, the Air District is required to enforce rules and regulations, including applicable state and federal law, to achieve and maintain the state and federal ambient air quality standards. CARB's primary responsibility is the control of emissions from vehicular sources (pursuant to Health and Safety Code sections 39002, 4000, 43013 and 43018). In addition, CARB's authority for adoption of mobile source regulations is: (1) one or more provisions related to its authority to adopt standards and other requirements for motor vehicle and off-road or non vehicular engines or vehicles, including, but not limited to, Health and Safety Code sections 39618, 43013, and 43018; and/or (2) one or more provisions related to its authority to adopt Airborne Toxic Control Measures, including, but not limited to, Health and Safety Code sections 35658, 39666 and 39667. In Health and Safety Code section 39001, the Legislature declared that a coordinated state, regional, and local effort to protect and enhance ambient air quality should be encouraged whenever possible.

To meet these statutory and regulatory objectives, the District and CARB entered into a partnership agreement, a Memorandum of Understanding (MOU), for enforcement of specified mobile source regulations. The purposes of the MOU are the following:

- The agencies share a common goal of protecting the People of the State of California through regulation and enforcement of air pollutant emissions reductions. By entering into the MOU, they commit to pursuing air pollution emission reductions in a manner most efficient to their respective financial constraints and available resources and most beneficial to achieving this common goal; and
- To further their shared goal of ensuring compliance in the San Francisco Bay Area with certain regulations adopted by CARB for motor vehicles and off-road or non-vehicle engine or vehicle categories, and to establish a collaborative enforcement model that builds upon their collective extensive enforcement experience.

The MOU is a critical component of the Mobile Source Compliance Plan as it serves to clarify the District's authority and defines the roles and responsibilities of each agency. This is the first comprehensive mobile source enforcement MOU between CARB and an air district. CARB has informed staff that it will serve as the "model" or template for similar agreements with other air districts for mobile source and/or greenhouse gas emissions enforcement. The MOU was finalized on November 4, 2009 and is included as Appendix B.

IMPLEMENTATION PLANNING AND SCHEDULE

To date, in addition to conducting the mobile source inspections discussed above, staff completed several operational and logistical steps to ensure timely and effective Plan implementation. Key steps are outlined below.

- **Security Clearances:** All District inspection staff have obtained security clearances (known as “TWIC cards”) required by Homeland Security to access Ports.
- **Staffing:** In mid-2008, the Air Toxics Inspection group was created within the Compliance and Enforcement Division (CED). In addition to other air toxics enforcement, inspectors within this group are responsible for mobile source compliance assistance and enforcement, primarily at the Port of Oakland and West Oakland. Additional CED inspectors who are assigned to specific locations throughout the Bay Area will be conducting these activities in their respective CARE areas. CED Subject Matter Experts (SMEs) have also been assigned to conduct air program development activities, in coordination with District inspectors and CARB.
- **Training:** Training is a critical component of the MSCP, specifically due to the complex (and dynamic) nature of many of the mobile source rules. To date, CARB conducted training for District staff for the PERP and commercial vehicle idling rules; recently they provided a Diesel Vehicle Regulation Overview course for industry and regulatory agencies. The District is currently working with CARB to develop a mobile source training program; pursuant to the program, CARB will soon conduct trainings for staff for all the remaining rules in the District’s Plan.
- **“Side-by-side” CARB/BAAQMD training inspections:** In summer 2009, staff began conducting monthly mobile source familiarization inspections with CARB which have included to date, ships, harbor craft, transport refrigeration units and other mobile sources addressed in the MSCP.
- **Steps to Drayage Truck Rule enforcement:** Drayage trucks represent highly significant sources of diesel PM, therefore plans are underway for a strong enforcement presence at the Port of Oakland to ensure compliance with the January 1, 2010 Drayage Truck Rule (DTR) deadline. In September, District staff began extensive DTR outreach activities in partnership with the Port Of Oakland. Staff also continue to inspect all trucks that will receive District grant funds for engine retrofits or replacements required under DTR (approximately 1,000 trucks by early December).

- Implementation Projections: Implementation of commercial vehicle and off-road vehicle idling restrictions enforcement will commence in early 2010. Portable engines enforcement is projected for the 1st quarter of 2010; staff will coordinate with CAPCOA and CARB on the appropriate enforcement approach (and implementation start). Implementation of the mobile cargo handling equipment and transport refrigeration unit (TRU) rules are planned to commence the 2nd and 3rd quarters of 2010, respectively. Enforcement will commence for commercial harbor craft and ship rules in the 2nd quarter of 2010. A key component of the MSCP implementation is conducting compliance assistance activities (including outreach) for each rule subject to the Plan.

See Table 1 above (and Appendix A) for implementation dates for each rule within the Mobile Source Compliance Plan.

SUMMARY

The Bay Area Air Quality Management District is the first air district in the State to enter into a comprehensive mobile source enforcement partnership agreement with CARB. By implementation of the MOU and the Mobile Source Compliance Plan, the District will reduce diesel PM exposures, can provide leadership on mobile source enforcement, and will improve air quality for the communities we serve.

**APPENDIX A — Summary of Rules subject to the Mobile Source
Compliance Plan**

Mobile Source Compliance Plan – *The Rules in Brief*¹

Trains

Railroad Strategies
Statewide MOU limited to rail operator signatories on June 2005

APPLICABILITY

Locomotive idling limitations (15 minutes) at specified railyards agreed to by signatories (Union Pacific Railroad (UPRR) and BNSF Railway (BNSF)).

CORE PROGRAM

Quarterly inspections for idling compliance alternating between State and District staff in Richmond and Oakland.

STATUS

Operational - BAAQMD Implementation September 2006. On December 21, 2006, the Air District entered into the *Bay Area Implementation Protocol for the ARB/Statewide Agreement* with CARB, UPRR and BSNF.

KEY DEADLINES

Automatic Idling-Reduction Devices (IRD) shall be installed in locomotives with automatic shutdown devices.	35% by 2006 70% by 2007 >99% by 2008
At least 80% of the Locomotive fuel supplied in CA must be ultra-low sulfur content diesel fuel (CARB diesel).	12/31/2006

¹ Collectively termed “rules,” these include air toxic control measures (ATCMs), regulations and mobile source statutes and/or agreements.

Trucks

**Port Truck
Terminal
Idling**
*Health and
Safety Code
Section
40720
(AB 2650,
Lowenthal)*

APPLICABILITY

Each marine terminal in the State shall operate in a manner that does not cause trucks to idle or queue for more than 30 minutes while waiting to enter the gate of any marine terminal. Applicable to specified California Ports (in the Bay Area, only applicable to the Port of Oakland).

CORE PROGRAM

Enforcement of the 30 minute idling standard.

STATUS

Operational - BAAQMD Implementation January 2003.

KEY DEADLINE

Legislation effective date January 1, 2003.

Trucks

**Heavy-Duty
Drayage
Trucks**
*Title 13, CCR,
Section 2027*

APPLICABILITY

This regulation applies to owners and operators of on-road diesel-fueled heavy-duty drayage trucks operated at California ports and intermodal rail yard facilities. This regulation also applies to “motor carriers,” “marine or port terminals,” “intermodal rail yards,” and “railyard and port authorities.”

CORE PROGRAM

Requires State registration and compliance with emission standards. By December 31, 2009, all trucks must meet the equivalent of the on-road 2004 emission standard via newer trucks or verified diesel emission control strategies (VDECS). All pre-1994 engines are phased-out January 1, 2010. After December 31, 2013, drayage trucks must meet the 2007 engine emissions standards. Reporting requirements for marine and port terminals and intermodal railyards. Motor Carriers may not dispatch non-compliant trucks to ports or intermodal railyards.

STATUS

BAAQMD outreach 4th Quarter 2009; Implementation with strong BAAQMD enforcement presence January 1, 2010.

KEY DEADLINES

Register with the Drayage Truck Registry (DTR) database.	9/30/2009
Phase 1, Must have a 1994 or newer model year engine that meets or exceeds 2004 model year California or Federal emission standards.	12/31/2009
Quarterly reporting requirements for Marine Terminals and Railyards to Port or Rail Authority.	1 st Report 4/15/2010
Quarterly reporting reports to CARB by Port and Rail authorities to CARB.	1 st Report 5/15/2010
Phase 2, All drayage trucks must be equipped with a 1994 or newer model year engine that meets or exceeds 2007 model year California or Federal emission standards.	1/1/2014

AMENDMENTS PENDING

Requirements for 2004 and 2005-2006 trucks for retrofit/replacement by 2011 and 2012, respectively.

Trucks

Commercial Vehicle and Sleeper Berth Idling
Title 13, CCR, Section 2485

APPLICABILITY

Applies to diesel-fueled commercial motor vehicles that operate in the State of California with gross vehicular weight ratings of greater than 10,000 pounds that are or must be licensed for operation on highways. This specifically includes California-based vehicles and Non-California-based vehicles.

CORE PROGRAM

Enforcement of the 5 minute idling standard.

STATUS

BAAQMD Implementation 1st Quarter 2010.

KEY DEADLINES

Prohibits driver from idling of subject vehicle's primary diesel engine for greater than 5 minutes at any location.	2/1/2005
Five minute idling restriction for the operation of diesel fueled APS to power a heater, air conditioner or auxiliary equipment during sleeping or resting in a sleeper berth.	Delayed by CARB until 1/1/2008

Trucks and Equipment

In-Use Off-Road Diesel Vehicles (In-Use Construction Equipment)
Title 13, CCR, Sections 2449, 2449.1-2449.3

APPLICABILITY

Applies to any person, business, or government agency who owns or operates (within California) any diesel fueled or alternative diesel fueled off-road compression ignition vehicle engine (with maximum power of 25 horsepower (hp) or greater) that is used to provide motive power in a workover rig or to provide motive power that cannot be registered as an on-road vehicle and the vehicle is not an implement of husbandry or recreational off-highway vehicle. Specifically excluded are all on-road vehicles.

CORE PROGRAM

5 minute idling standard for equipment not engaged in work. Complex fleet emissions standards strategy that requires equipment replacement and/or retrofitting of emission controls.

STATUS

BAAQMD Implementation 1st Quarter 2010.

KEY DEADLINES

Prohibits idling for more than 5 consecutive minutes.	6/15/2008
Requires fleet owner to provide a written idling policy to vehicle operators that informs them of the 5-minute idling limitation.	3/1/2009
Prohibition against adding vehicles/equipment with Tier 0 engines to fleets.	3/1/2009
Requires labeling of vehicles with a CARB-issued Equipment Identification Number (EIN).	4/1/2009
Requires large fleets to meet the fleet average emission rate target for PM by March 1 of each year or apply VDECS to 20% of its horsepower.	2010
Requires medium fleets to meet the fleet average emission rate target for PM by March 1 of each year or apply the highest level VDECS to 20% of its horsepower.	2013
Requires small fleets to meet the fleet average emission rate target for PM or apply the highest level VDECS to 20% of its horsepower.	2015

Equipment

**PERP
Registration
Program**
*Title 13, CCR,
Section 2450*

APPLICABILITY

Established a statewide program for the registration and regulation of portable engines and engine-associated equipment (portable engines and equipment units). Registration under this regulation is voluntary for owners of portable engines or equipment units.

CORE PROGRAM

Inspection of registered sources, surveillance for unpermitted equipment.

STATUS

Operational – BAAQMD Implementation January 2007.

KEY DEADLINES

Use California motor vehicle fuels (low sulfur diesel).	1/1/2006
Registration identification device shall be affixed to registered portable equipment.	9/12/2007

Equipment

Portable Engines

Title 17, CCR.
Section
93116 -
93116.5

APPLICABILITY

All portable engines having a maximum rated brake horsepower of greater or equal to 50 (bhp) and fueled with diesel are subject to this ATCM. Exceptions include engines: used to propel mobile equipment or a motor vehicle; using an alternative fuel; used for tactical support and limited specified engines.

CORE PROGRAM

Fuel and emissions standards, complex fleet emissions averaging strategy with tiered engine standards. First fleet emission compliance date is January 1, 2013.

STATUS

BAAQMD implementation 1st Quarter 2010.

KEY DEADLINES

Use fuels that meet standards for California motor vehicle fuels.	1/1/2006
Diesel-fueled portable engines shall only use CARB approved fuels, alternative fuels or additives.	9/12/2007
Enforceable recordkeeping and non-resettable hour-meter requirements.	1/1/2008
Portable diesel engines may be permitted or registered by a district until January 2010.	12/31/2009
All portable diesel-fueled engines shall be certified to meet a federal or California non-road engine emission standard. Phase-out of Tier 0 engines.	1/1/2010
Fleet record retention requirements.	3/1/2011
Fleet recordkeeping requirements.	1/1/2012
Statements of compliance are due to the Executive Officer for fleet standards that become effective January 1, 2013.	3/1/2013 3/1/2017 3/1/2020

Equipment

**Mobile
Cargo
Handling
Equipment**
*Title 13, CCR,
Section 2479*

APPLICABILITY

Applies to any person who conducts business in California who sells, offers for sale, leases, rents, purchases, owns or operates any diesel mobile cargo handling equipment that operates at any California port or intermodal railyard. Exemptions include but are not limited to fuel delivery trucks, vans and buses used for personnel transport, military tactical support equipment and portable compression ignition (CI) engines.

CORE PROGRAM

Complex fleet averaging engine tier strategy, phased in through 2017. Currently operators of equipment are required to comply by installing compliant engines, retiring equipment, or by retrofitting non-yard truck equipment with verified diesel emission control strategies (VDECS).

STATUS

BAAQMD Implementation 2nd Quarter 2010.

KEY DEADLINES

Recordkeeping and annual reporting requirements.	1/31/2007
Complex specified compliance schedules for in-use yard truck fleets of 3 or less (with/and with out VDECS).	12/31/2007 – 12/31/2015
Complex specified compliance schedules for in-use yard truck fleets of 4 or more (with/and with out VDECS).	12/31/2007– 12/31/2017

AMENDMENTS PENDING

Workshop level discussions regarding including idling limitations.

Equipment

**Transport
Refrigeration
Units (TRU)**
*Title 13, CCR,
Section 2477*

APPLICABILITY

The TRU ATCM requires all TRUs and TRU generator sets (“gen sets”) that operate in California, regardless of where they are based (including out-of-state and out-of-country), to meet in-use performance standards that are phased in beginning December 31, 2008. Facilities where TRUs operate (with 20 or more loading doors) also have reporting and other standards to meet under this ATCM.

CORE PROGRAM

All TRUs and TRU gen sets must eventually meet the most stringent in-use standard. Requires compliance by using a CARB – certified engine or equipping the engine with the required level of VDECs. Standards require use of a diesel particulate filter that reduces DPM exhaust emissions by at least 85 percent. Owners of California-based TRUs and TRU gen sets must apply for CARB identification numbers (IDN) by January 31, 2009. Operators of California-based TRUs must submit Operator Reports by January 31, 2009.

STATUS

BAAQMD Implementation 3rd Quarter 2010. CARB/BAAQMD Joint familiarization inspections began late Summer 2009.

KEY DEADLINES

TRU Facility reporting requirements.	1/31/2006
Requires applications for CARB ID number.	1/31/2009
Operator Reporting requirements.	1/31/2009
In-Use Compliance Dates Tier strategy phasing requirements for TRUs with less than, equal to or greater than 25 hp.	12/31/2007 – 12/31/2020

AMENDMENTS PENDING

Draft regulatory concepts prohibit the use of internal combustion engines to power TRUs on trucks, trailers, shipping containers, and railcars used for extended cold storage at California facilities.

Boats

Commercial Harbor Craft
Title 13, CCR, Section 2299.5 & Title 17, CCR, Section 93118.5

APPLICABILITY

Any person who sells, supplies, offers for sale, purchases, owns, operates, leases, charters, or rents any new or in-use diesel fueled Harbor Craft for use within California waters (24 nautical miles of the coast).

CORE PROGRAM

Requires State registration and compliance with fuel sulfur content, non-resettable hour meters and Tier 2/Tier 3 engine emission standards. Exemptions include but are not limited to, recreational vessels, temporary emergency vessels, U.S Coast Guard vessels or registered historic vessels.

STATUS

BAAQMD Implementation 2nd Quarter 2010. CARB/BAAQMD Joint familiarization inspections began late Summer 2009.

KEY DEADLINES

State Registration with reporting requirements.	February 28, 2009
Fuel sulfur requirements.	January 1, 2009
Non-resettable hour meters.	January 1, 2009
New engine requirements.	January 1, 2009
Tier Emission Standards	2009-2022

AMENDMENTS PENDING

Proposals to bring crew and supply vessels up to the same standards as other harbor craft.

Ships

Ocean-Going Vessels While at Berth

APPLICABILITY
Title 13, CCR, Section 2299.3 & Title 17, CCR, Section 93118

APPLICABILITY
 Any person who owns, operates, charters, rents, or leases any U.S. or foreign-flagged container vessel, passenger vessel, or refrigerated cargo vessel that visits a California port, relating to the operation of auxiliary diesel engines on ocean-going vessels at-berth in a California port within California regulated waters (within 24 miles of the coast).

CORE PROGRAM

Reduce berthed ship emissions by 80% through the use of shore power and other strategies by 2020. There are two options to achieve the reductions: reduced onboard power generation (ROPG, a.k.a. “shore power” or grid power); or equivalent emissions reduction (EER). There are tiered deadlines beginning in 2010 for EER and 2014 for ROPG.

STATUS

BAAQMD Implementation 2nd Quarter 2010.

KEY DEADLINES

Marine Terminal Operator Plans to CARB.	7/1/2009
EER Annual Compliance Statement Reports.	3/1/2011 – 3/1/2019
ROPG Annual Compliance Statement Reports.	3/1/2015 - 3/1/2019
EER % reductions – tiered (NOx & PM)	1/1/2010 - 10% 1/1/2012 - 25% 1/1/2014 - 50% 1/1/2017 - 70% 1/1/2020 - 80%
ROPG % reductions – tiered	1/1/2014 1/1/2017 1/1/2020

Ships

Fuel Sulfur and Other Operational Requirements for Ocean-Going Vessels

Title 13, CCR, Sections 2299.2 & Title 17, CCR, Section 93118.2

APPLICABILITY

Applies to any person who owns, operates, charters, rents, or leases any ocean-going vessel that operates in any of the Regulated California Waters, which include interior waters and within 24 nautical miles of California's coast.

CORE PROGRAM

Clean fuel standard (sulfur content) cleaner-burning marine fuel to power the ships main engines and the auxiliary boilers/engines in regulated waters.

STATUS

BAAQMD Implementation 2nd Quarter 2010. CARB/BAAQMD Joint familiarization inspections began mid Summer 2009.

KEY DEADLINES

Recordkeeping requirements.	6/28/2009
Fuel Sulfur Content Limits (FSCL) – auxiliary engines.	6/28/2009
Fuel Sulfur Content Limits (FSCL) – main engines.	7/1/2009
Ultra-low FSCL for auxiliary and main engines.	1/1/2012

Ships

**Limiting
Onboard
Incineration
on
Cruise Ships
and
Oceangoing
Ships**

*Title 17, CCR,
Section
93119*

APPLICABILITY

Applies to any person who owns or operates a cruise ship with 250 passengers or more or any ocean-going vessel of 300 registered tons or more.

CORE PROGRAM

Prohibits operation of shipboard incinerators within 3 miles of the California coast unless directed by the Coast Guard.

STATUS

Operational – BAAQMD Implementation since 2007. CARB/BAAQMD joint inspections in July and August 2009. Upcoming BAAQMD inspections November 2009.

KEY DEADLINES

Recordkeeping requirements.	11/28/2007
Incineration prohibitions.	11/2007

**APPENDIX B — Memorandum of Understanding (MOU) between
CARB and BAAQMD**

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE CALIFORNIA AIR RESOURCES BOARD AND
THE BAY AREA AIR QUALITY MANAGEMENT DISTRICT
REGARDING ENFORCEMENT OF SELECTED
AIR RESOURCES BOARD REGULATIONS**

1. PARTIES

This Memorandum of Understanding is entered into by and between the California Air Resources Board (ARB or Board) and the Bay Area Air Quality Management District (BAAQMD). ARB and BAAQMD are collectively referred to herein as "the Parties."

2. PURPOSE

- 2.1 The Parties, two government agencies, share a common goal of protecting the People of the State of California through regulation and enforcement of air pollutant emission reductions. In entering into this Memorandum of Understanding (MOU), the Parties are committed to pursuing air pollution emission reductions in a manner most efficient to their respective financial constraints and available resources and most beneficial to achieving this common goal.
- 2.2 This MOU is intended to (1) further the Parties' shared goal of ensuring compliance in the San Francisco Bay Area with certain regulations adopted by ARB for motor vehicles and off-road or nonvehicle engine or vehicle categories, and (2) establish a collaborative enforcement model that builds upon the Parties' extensive enforcement experience.
- 2.3 This MOU does not create any binding legal obligations between the Parties or modify or supersede any laws or regulations.

3. BACKGROUND

- 3.1 Powers of ARB. Pursuant to California Health and Safety Code section 39603, ARB may enter into agreements for services as necessary for the performance of its powers and duties.
- 3.2 Powers of BAAQMD. Pursuant to California Health and Safety Code section 40701, BAAQMD may enter into agreements with a state agency as necessary or proper to accomplish the purposes of Division 26 of the Health and Safety Code. Division 26 is the division that creates, authorizes, and establishes ARB and BAAQMD and establishes all of their respective duties and responsibilities pertinent to the matters set out herein.
- 3.3 Responsibilities Under State Law. Under California law, each Party is assigned primary authority over particular types of the air pollution emission sources covered by this MOU. Pursuant to Health and Safety Code sections 39002 and 40000, BAAQMD's primary responsibility is the control of air pollution from all sources other than vehicular

sources. Pursuant to Health and Safety Code sections 39002, 40000, 43013, and 43018, ARB's primary responsibility is the control of emissions from vehicular sources.

3.4 Coordinated Effort. In California Health and Safety Code section 39001, the Legislature declares that a coordinated state, regional, and local effort to protect and enhance ambient air quality should be encouraged whenever possible.

3.5 Emission Reduction Plans

3.5.1 In 1998, pursuant to Health and Safety Code sections 39650 through 39675, ARB identified diesel particulate matter (PM) as a toxic air contaminant (TAC) with no specified threshold exposure level. After identifying diesel PM as a TAC, ARB conducted an assessment of the need for regulation pursuant to Health and Safety Code sections 39658, 39665, 39666, and 39667. In 2000, ARB completed this assessment and adopted a *Risk Reduction Plan to Reduce Particulate Matter Emissions from Diesel-Fueled Engines and Vehicles*. The plan included recommendations for the development of control measures for diesel sources. It also established a goal of reducing California's diesel PM emissions and associated cancer risks by 85% by 2020 from 2000 levels.

3.5.2 Because much of the activity at large ports relies on diesel equipment, ports have been a particular focus of ARB diesel PM regulatory activities. To guide these activities, ARB adopted its Emission Reduction Plan for the Ports and Goods Movement in California in April 2006. The plan identified strategies for reducing emissions of diesel PM and other pollutants created by the movement of goods through California ports and was part of the broader Goods Movement Action Plan being jointly carried out by the California Environmental Protection Agency and the Business, Transportation, and Housing Agency.

3.5.3 ARB's *Emission Reduction Plan for the Ports and Goods Movement in California* proposed, among other things, the adoption of regulations to reduce particulate matter and ozone precursor emissions from ships, commercial harbor craft, cargo handling equipment, and trucks.

3.6 ARB Regulations. In implementing its plans and carrying out its responsibilities under state law, ARB adopted, among others, the following regulations:

3.6.1 "Regulation to Establish a Statewide Portable Equipment Registration Program" (California Code of Regulations, title 13, sections 2450 through 2466) and "Airborne Toxic Control Measure for Diesel Particulate Matter from Portable Engines Rated at 50 Horsepower and Greater" (California Code of Regulations, title 17, sections 93116 through 93116.5) (Portable Equipment Regulations).

3.6.2 "Airborne Toxic Control Measure to Limit Diesel-Fueled Commercial Motor Vehicle Idling" (California Code of Regulations, title 13, section 2485) (Commercial Vehicle Idling Regulation).

- 3.6.3 “Regulation for Mobile Cargo Handling Equipment at Ports and Intermodal Rail Yards” (California Code of Regulations, title 13, section 2479) (Cargo Handling Equipment Regulation).
 - 3.6.4 “Regulation for In-Use Off-Road Diesel Vehicles” (California Code of Regulations, title 13, sections 2449, 2449.1, 2449.2, and 2449.3) (In-Use Construction Equipment Regulation).
 - 3.6.5 “Emission Limits for Diesel Engines on Commercial Harbor Craft Operated Within California Waters and 24 Nautical Miles of the California Baseline” (California Code of Regulations, title 13, section 2299.5) and “Airborne Toxic Control Measure for Diesel Engines on Commercial Harbor Craft Operated Within California Waters and 24 Nautical Miles of the California Baseline” (California Code of Regulations, title 17, section 93118.5) (Commercial Harbor Craft Regulations).
 - 3.6.6 “Airborne Toxic Control Measure for Auxiliary Diesel Engines Operated on Ocean-Going Vessels At-Berth in a California Port” (California Code of Regulations, title 13, section 2299.3 and title 17, section 93118.3) (Shore Power Regulations).
 - 3.6.7 “Regulation to Control Emissions from In-Use On-Road Diesel-Fueled Heavy-Duty Drayage Trucks” (California Code of Regulations, title 13, section 2027) (Drayage Truck Regulation).
 - 3.6.8 “Airborne Toxic Control Measure for Fuel Sulfur and Other Operational Requirements for Ocean-Going Vessels Within California Waters and 24 Nautical Miles of the California Baseline” (California Code of Regulations, title 17, section 93118.2) and “Fuel Sulfur and Other Operational Requirements for Ocean-Going Vessels Within California Waters and 24 Nautical Miles of the California Baseline” (California Code of Regulations, title 13, section 2299.2) (Vessel Fuel Sulfur Regulations).
 - 3.6.9 “Airborne Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Units (TRU) and TRU Generator Sets, and Facilities Where TRUs Operate” (California Code of Regulations, title 13, section 2477) (Transport Refrigeration Regulation).
 - 3.6.10 “Airborne Toxic Control Measure Limiting Onboard Incineration on Cruise Ships and Oceangoing Ships” (California Code of Regulations, title 17, section 93119) (Vessel Onboard Incineration Regulation).
- 3.7 Legal Authority for ARB Regulations. For each of the regulations listed above, ARB’s authority for adoption of the regulations is (1) one or more provisions related to its authority to adopt standards and other requirements for motor vehicle and off-road or non

vehicular engines or vehicles, including, but not limited to, Health and Safety Code sections 39618, 43013, and 43018, and/or (2) one or more provisions related to its authority to adopt Airborne Toxic Control Measures, including, but not limited to, Health and Safety Code sections 35658, 39666 and 39667.

3.8 Enforcement Authority

3.8.1 ARB Enforcement Authority

- 3.8.1.1 Health and Safety Code section 39515 directs the Board to appoint an Executive Officer, who shall serve at the pleasure of the Board, and provides that the Board may delegate any duty to the Executive Officer that the Board deems appropriate, except that certain statutory reviews by the Executive Officer of district attainment plan activities are subject to the California Administrative Procedure Act.
- 3.8.1.2 Health and Safety Code section 39516 provides that any power, duty, purpose, function, or jurisdiction which the Board may lawfully delegate shall be conclusively presumed to have been delegated to the Executive Officer unless it is shown that the Board, by affirmative vote recorded in its minutes, specifically has reserved the same for the Board's own action.
- 3.8.1.3 Resolution 78-10, adopted by the Board on February 23, 1978, identifies powers, duties, purposes, functions and jurisdictions that the Board has specifically reserved unto itself.
- 3.8.1.4 Resolution 05-40, adopted by the Board on July 21, 2005, specifically reserves to the Board authority to ratify or amend any memorandum of understanding with air pollution sources unto itself.
- 3.8.1.5 Enforcement of ARB regulations is not a power or function that the Board has specifically reserved to itself under Resolution 78-10 or Resolution 05-40 and is therefore conclusively presumed to have been delegated to the ARB Executive Officer.
- 3.8.1.6 In carrying out ARB enforcement responsibilities, the ARB Executive Officer may delegate the performance of ministerial tasks, including the investigation and determination of facts preliminary to agency action. (*California School Employees Assn. v. Personnel Com. of Pajaro Valley Unified School Dist.* (1970) 3 Cal.3d 139.)

- 3.8.2 BAAQMD Enforcement Authority Pursuant to Health and Safety Code section 40001, BAAQMD is required to enforce rules and regulations, including applicable state and federal law, to achieve and maintain the state and federal ambient air quality standards.

3.9 Need for Enforcement of ARB Regulations

- 3.9.1 BAAQMD has identified, through modeling in connection with its Community Air Risk Evaluation (CARE) program, various geographical areas within the San Francisco Bay Area that have higher-than-average emission density and concentration of diesel particulate matter.
- 3.9.2 Compliance with the ARB regulations is necessary to achieve significant reductions in emissions of diesel PM and other pollutants in these areas and throughout the Bay Area.

4. AGREEMENT

4.1 Authorization to Enforce

- 4.1.1 ARB authorizes BAAQMD to conduct investigations to determine compliance with the regulations listed in section 3.6 of this MOU, as well as any subsequent amendments to those regulations.
- 4.1.2 ARB authorizes BAAQMD to issue Notices of Violation (NOV)/citations for violations of any of the regulations listed in section 3.6 of this MOU, as well as any subsequent amendments to those regulations.
- 4.1.3 ARB retains enforcement authority to enforce the regulations listed in section 3.6, and this MOU shall not be interpreted to diminish in any manner ARB authority to enforce its regulations, either alone or jointly with BAAQMD.
- 4.1.4 This authorization shall not be interpreted to impose upon BAAQMD any obligation to enforce any of the regulations listed in section 3.6 of this MOU.
- 4.1.5 Variances from state law are prohibited under Health and Safety Code section 42350. Nothing in this MOU shall be interpreted to allow variances from the regulations listed in section 3.6 or any other state regulation.

4.2 Standards of Performance

- 4.2.1 BAAQMD shall carry out enforcement activities pursuant to this MOU in accordance with ARB regulations, rules, policy, guidance, and training.
- 4.2.2 BAAQMD enforcement activities pursuant to this MOU shall be carried out by qualified inspectors or trained enforcement staff.
- 4.2.3 ARB shall provide BAAQMD with periodic training as needed.

4.2.4 In the event of a disagreement between BAAQMD and a third party regarding the interpretation of an ARB regulation, ARB will be notified and will provide assistance.

4.3 ARB Oversight

4.3.1 ARB personnel may accompany BAAQMD personnel on all inspections and other enforcement activities and may review any BAAQMD records related to enforcement of the regulations listed in section 3.6. BAAQMD personnel may accompany ARB personnel on inspections for purposes of training, ensuring consistency, and joint enforcement.

4.3.2 ARB may periodically evaluate the performance of BAAQMD in enforcing the ARB regulations and shall review and discuss any evaluations with BAAQMD with a primary aim of ensuring consistency between ARB and BAAQMD enforcement activities.

4.3.3 For all inspection activities conducted pursuant to this MOU, BAAQMD shall submit to ARB semiannual reports describing the number of inspections conducted and listed by type, date and location, the number of NOV/citations issued, and the date, recipient, and regulation cited for each NOV/citation.

4.4 Enforcement Coordination

4.4.1 BAAQMD shall use ARB-approved inspection, NOV/citation, and recordkeeping forms, developed either by ARB or BAAQMD.

4.4.2 ARB and BAAQMD will coordinate all enforcement activities and may conduct joint inspections and investigations.

4.4.3 BAAQMD will refer all NOV/citations to ARB for resolution, unless otherwise agreed to by both parties. ARB may pursue litigation or settlement using the authority, mechanisms, and remedies available to it under California law.

4.4.4 Either Party may pursue compliance initiatives aimed at particular classes of violations or facilities. The Parties will cooperate in the execution of any such initiatives.

4.5 Civil Penalties. When BAAQMD issues a NOV/citation for violation of a regulation listed in section 3.6 and refers the violation to ARB for litigation or settlement, any civil penalties for the violation shall be shared equally between the Parties.

4.6 Term. This MOU shall be effective upon full execution by both Parties and shall continue in full force and effect unless terminated by either Party pursuant to the terms of the MOU.

- 4.7 Termination. Either Party may terminate this MOU for any reason by providing a written notice of its intent to terminate no later than 60 days before the date of termination.
- 4.8 Indemnification. Each Party agrees to indemnify, defend and hold harmless the other party, and the officers, employees, agents and contractors of the other, from and against any claims, liabilities, costs or losses of any kind that arise from, or are alleged to arise from the Party's actions under or the performance of this MOU, except for any such loss, damage, injury or death to the extent caused by the active negligence or other wrongful conduct of the other Party.
- 4.9 Entire Agreement. This MOU represents the entire agreement of the Parties, and merges and supersedes any prior written or oral representations, discussions, understandings or agreements by or between the Parties relating to the subject matter of this MOU.
- 4.10 Modification. No addition to or modification of any term or provision of this MOU will be effective unless set forth in writing and signed by an authorized representative of each of the Parties.
- 4.11 Authority. Each Party represents and warrants that it has the right, power, and authority to execute this MOU. Each Party represents and warrants that it has given any and all notices, and obtained any and all consents, powers and authorities, necessary to permit it, and the persons executing this MOU for it, to enter into this MOU.
- 4.12 Third Parties. This MOU shall not be construed to bind any Party in any manner with respect to any person or entity that is not a Party to this MOU, or a successor or assign of a Party.
- 4.13 Notices. Any notice or report required or permitted to be given under this MOU shall be in writing and shall be deemed to be given when served personally, or on the third day after mailing if mailed in the United States mail, postage prepaid, addressed to the address for each Party set forth below:

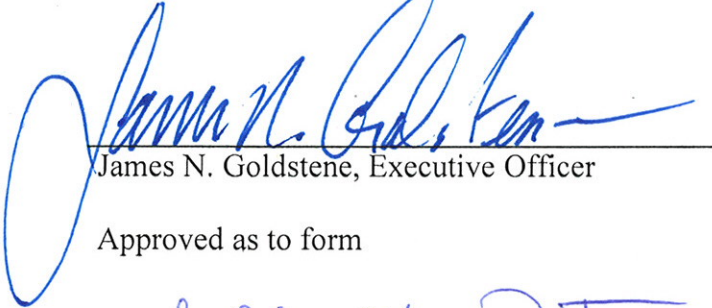
To ARB: Attention: James Ryden
 Chief of the Enforcement Division
 California Air Resources Board
 1001 "I" Street
 P.O. Box 2815
 Sacramento, CA 95812

To BAAQMD: Attention: Kelly Wee
 Director, Compliance and Enforcement Division
 Bay Area Air Quality Management District
 939 Ellis St.
 San Francisco, CA 94109-7714

IN WITNESS WHEREOF, this MOU has been executed by the parties hereto.

CALIFORNIA AIR RESOURCES BOARD

BAY AREA AIR QUALITY
MANAGEMENT DISTRICT



James N. Goldstene, Executive Officer



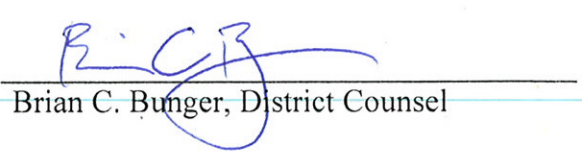
Jack P. Broadbent, Executive Officer/APCO

Approved as to form

Approved as to form



Ellen M. Peter, Chief Counsel



Brian C. Bungler, District Counsel