

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE PORT OF LOS ANGELES AND THE
CALIFORNIA AIR RESOURCES BOARD
REGARDING ENFORCEMENT OF SELECTED
AIR RESOURCES BOARD REGULATIONS**

I. PARTIES

This Memorandum of Understanding (“MOU”) is made and entered into by and between the City of Los Angeles Harbor Department, acting by and through its Board of Harbor Commissioners (“POLA”), and the California Air Resources Board (“ARB” or “Board”), collectively referred to herein as “the Parties.”

II. PURPOSE

2.1 POLA and ARB, two government agencies, share a common goal of protecting the People of the State of California through the reduction of emissions from activities taking place at the Port of Los Angeles. In entering into this MOU, the Parties are committed to pursuing emission reductions in a manner most efficient to their respective financial constraints and available resources and most beneficial to achieving this common goal; and

2.2 This MOU is intended to (1) further the Parties’ shared goal of ensuring the compliance of commercial trucks operating at the Port of Los Angeles with certain regulations adopted by ARB for motor vehicles and off-road non-vehicle engine or vehicle categories, and the Clean Air Action Plan, (2) establish a collaborative enforcement model that builds upon the Parties’ extensive enforcement experience (3) allow certain Port Police enforcement actions to utilize the ARB administrative processes and (4) provide an ongoing framework for ARB training of Port Police officers; and

2.3 It is understood that this MOU does not create any binding legal obligations between the Parties or modify or supersede any laws or regulations; and

III. BACKGROUND

3.1 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; and

3.2 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; and

3.3 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; and

3.4 Much of the activity at large ports relies on diesel equipment, and reducing the health risk at ports have been a particular focus of ARB diesel PM regulatory activities. To guide these activities, ARB adopted its *Emission Reduction Plan for 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 in California 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; and

3.5 The *Emission Reduction Plan for Ports and Goods Movement in California* proposed, among other things, the adoption of regulations to reduce particulate matter and ozone precursor emissions from trucks; and

3.6 On November 20, 2006, the governing boards of the ports of Los Angeles and Long Beach voted to approve the San Pedro Bay Ports Clean Air Action Plan (“CAAP”), a comprehensive strategy to cut air pollution and reduce health risks. The historic vote committed the ports to an aggressive plan to reduce pollution by at least 45 percent within five years.

3.7 On November 22, 2010, the ports of Los Angeles and Long Beach approved the 2010 Update to the San Pedro Bay Ports Clean Air Action Plan (CAAP Update) that includes new goals for curbing port-related air pollution over the next decade. The ports have developed the following San Pedro Bay Standards for reducing air pollutant emissions and health risk, relative to the 2005 base year:

- 1) By 2014, reduce port-related emissions by 22 percent for NOx, 93 percent for SOx and 72 percent for DPM
- 2) By 2023, reduce port-related emissions by 59 percent for NOx, 93 percent for SOx and 77 percent for DPM; and

3.8 Pursuant to the Charter of the City of Los Angeles, POLA has the authority to enter agreements as necessary to fulfill its Charter obligations; and

3.9 ARB REGULATIONS

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

- A. Airborne Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Units (TRUs) and TRU Generator Sets, and Facilities Where TRUs Operate. (California Code of Regulations, title 13, section 2477) (Transport Refrigeration Regulation)
- B. Heavy Duty Diesel Smoke Emission Testing, and Heavy-Duty Vehicle Emission Control System Inspections. (California Code of

Regulations, title 13, section 2180 and 2183) (Heavy Duty Vehicle Inspection Program and Emission Control Label)

- C. “Airborne Toxic Control Measure to Limit Diesel-Fueled Commercial Motor Vehicle Idling” (California Code of Regulations, title 13, section 2485) (Commercial Vehicle Idling Regulation)
- D. Verification Procedure, Warranty, and In-Use Compliance Requirements for In-Use Strategies to Control Emissions from Diesel Engines. (California Code of Regulations, title 13, section 2706(j)) (Diesel Engine Soot Filter Regulation)
- E. “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)

3.10 LEGAL AUTHORITY FOR ARB REGULATIONS

For each of the regulations listed above in Section 3.9, 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-vehicle 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.

3.11 ENFORCEMENT AUTHORITY

A. POLA Authority

- 1. The Los Angeles City Charter section 657 provides that the Port Police shall remain under the independent and autonomous control of the Harbor Department.

2. The Port Police are sworn police officers and have all powers granted them by California Penal Code section 830.1.

B. ARB Enforcement Authority

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.
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. 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 its self.
4. 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.

5. 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)*

C. Need for Enforcement of ARB Regulations

1. POLA's Clean Truck Program is a central element to the CAAP. In order to achieve CAAP's emission reduction goals the Clean Truck Program must ensure that the drayage trucks servicing the port met the requirements of the clean truck ban and are abiding by ARB rules and regulations which mandate emission reductions.
2. Training provided by ARB to the Port Police will enhance enforcement by the Port Police of ARB regulations whose object is to stem emissions of diesel PM and other pollutants thereby working toward the emission reduction goals of both POLA and ARB.
3. Direct joint enforcement collaboration with the ARB augments both POLA's and ARB's ability to achieve significant reductions in emissions of diesel PM and other pollutants in the port and throughout the South Coast.

IV. AGREEMENT

4.1 AUTHORIZATION TO ENFORCE

- A. ARB authorizes POLA to conduct investigations to determine compliance with the regulations listed in section 3.9 of this MOU, as well as any subsequent amendments to those regulations.

- B. ARB authorizes POLA to issue Notices of Violation (NOV)/citations for violations of any of the regulations listed in section 3.9 of this MOU, as well as any subsequent amendments to those regulations.
- C. ARB retains enforcement authority to enforce the regulations listed in section 3.9, and this MOU shall not be interpreted to diminish in any manner ARB authority to enforce its regulations, either alone or jointly with POLA.
- D. This authorization shall not be interpreted to impose upon POLA any obligation to enforce any of the regulations listed in section 3.9 of this MOU.

4.2 STANDARDS OF PERFORMANCE

- A. POLA enforcement activities pursuant to this MOU shall be carried out by the Port Police.
- B. ARB may provide Port Police with periodic training as agreed upon between the Parties.
- C. In the event of a disagreement between POLA and a third party regarding the interpretation of an ARB regulation, ARB will be notified and will provide assistance.
- D. For all inspection activities conducted pursuant to this MOU, POLA shall submit to ARB annual 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. This annual report shall be submitted to ARB no later than the end of the first quarter of the following year.

4.3 ENFORCEMENT COORDINATION

- A. POLA shall use ARB-approved inspection, NOV/citation, and record keeping forms.
- B. ARB and POLA may coordinate enforcement activities and may conduct joint inspections and investigations.
- C. POLA shall refer all NOV/citations issued for violation of any of the laws found in section 3.9 to ARB for resolution. ARB may pursue litigation or settlement using the authority, mechanisms, and remedies available to it under California law.
- D. Either Party may pursue compliance initiatives aimed at particular classes of violations or facilities. The Parties may cooperate in the execution of any such initiative.

4.4 CIVIL PENALTIES

When POLA issues a NOV/citation for violation of a regulation listed in section 3.9 and refers the violation to ARB for litigation or settlement, any civil penalties for the violation shall be shared equally between the Parties.

4.5 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.

4.6 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.

4.7 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.

4.8 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.

4.9 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.

4.10 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.

4.11 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.

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

To POLA: City of Los Angeles Harbor Department
425 S. Palos Verdes Street
P.O. Box 151
San Pedro, CA 90731
Attention: John Holmes, Deputy Executive Director, Operations

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IN WITNESS WHEREOF, the parties hereto have executed this MOU on the date to the left of their signatures.

THE CITY OF LOS ANGELES, BY ITS BOARD OF HARBOR COMMISSIONERS

Dated: _____, 2012

By: _____
Executive Director

Attest: _____
Board Secretary

CALIFORNIA AIR RESOURCES BOARD

Dated: _____, 2012

By: _____

(Print/type name and title)

Attest: _____

(Print/type name and title)

APPROVED AS TO FORM AND LEGALITY

_____, 2012
CARMEN A. TRUTANICH, City Attorney
THOMAS A. RUSSELL, General Counsel

By: _____
JUSTIN HOUTERMAN, Deputy City Attorney

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