

**State of California
Air Resources Board**

Executive Order S-23-003

Control Measure for Ocean-Going Vessels At Berth SIP Submittal

Whereas, sections (§) 39600 and 39601 of the Health and Safety Code (H&SC) authorize the California Air Resources Board (CARB or Board) to adopt standards, rules and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

Whereas, the California Legislature in H&SC § 39602 has designated CARB as the air pollution control agency for all purposes set forth in federal law;

Whereas, CARB is responsible for preparing a State Implementation Plan (SIP) for attaining and maintaining the national ambient air quality standards (NAAQS) as required by the federal Clean Air Act (the Act; 42 U.S.C. § 7401 et seq.), and to this end is directed by H&SC § 39602 to coordinate the activities of all local and regional air pollution control and air quality management districts (districts) necessary to comply with the Act;

Whereas, CARB has primary responsibility for the control of air pollution from vehicular sources, including motor vehicle fuels, as specified in H&SC §§ 39002, 39500, and part 5 (commencing with § 43000), and for ensuring that the districts meet their responsibilities under the Act pursuant to H&SC §§ 39002, 39500, 39602, 40469, and 41650;

Whereas, H&SC § 39602 also provides that the SIP shall include only those provisions necessary to meet the requirements of the Act;

Whereas, H&SC §§ 39002 and 39003 of the H&SC charge the Board with the responsibility of air pollution control from motor vehicles;

Whereas, H&SC §§ 39515 and 39516 provide that any duty may and shall be conclusively presumed to be delegated to the Board's Executive Officer as the Board deems appropriate unless specifically reserved to the Board by affirmative vote;

Whereas, on July 18, 1997, U.S. Environmental Protection Agency (U.S. EPA) promulgated the 80 parts per billion (ppb) 8-hour ozone NAAQS;

Whereas, on March 12, 2008, U.S. EPA promulgated the 75 ppb 8-hour ozone NAAQS;

Whereas, U.S. EPA designated the South Coast Air Basin (Basin) as an Extreme nonattainment area for the 80 and 75 ppb 8-hour ozone standards;

Whereas, on April 6, 2015, U.S. EPA revoked the 80 ppb 8-hour ozone standard, but maintained anti-backsliding requirement obligations;

Whereas, on March 23, 2017, the Board adopted the Revised Proposed 2016 State Strategy for the State Implementation Plan (2016 State SIP Strategy) and transmitted it to U.S. EPA for inclusion in the California SIP;

Whereas, the 2016 State SIP Strategy, in combination with local actions, was developed to provide emission reductions necessary to meet the 80 and 75 ppb 8-hour ozone standards in the Basin;

Whereas, the 2016 State SIP Strategy included a commitment to develop and bring to the Board for consideration the At Berth Regulation Amendments which were estimated to achieve 0.3 tons per day (tpd) of oxides of nitrogen (NOx) emission reductions in 2023 in the Basin;

Whereas, on August 27, 2020, CARB adopted the Control Measure for Ocean-Going Vessels At Berth (At Berth Regulation) which require emissions control technologies on auxiliary engines on ocean-going vessels docked at California ports, as well as auxiliary boilers for tanker vessels using boilers to power steam-driven pumps for off-loading cargoes while at berth;

Whereas, during the At Berth Regulation rulemaking process, CARB staff quantified the emissions reductions to be 1.1 tpd NOx in 2023 in the Basin;

Whereas, section 209 of the Act allows California to seek a waiver or authorization from federal preemption to enact emissions standards and other emission-related requirements for new motor vehicles and engines or new and in-use non-road engines and vehicles;

Whereas, California has relied on regulations covered by U.S. EPA waivers or authorizations in the California SIP to enact emission standards;

Whereas, on September 27, 2022, CARB submitted the At Berth Regulation to U.S. EPA seeking an authorization from federal preemption;

Whereas, CARB is requesting parallel processing in granting California's authorization of federal preemption for the At Berth Regulation and approval into the California SIP;

Whereas, federal law set forth, in Section 110(l) of the Act¹ and Title 40 of the Code of Federal Regulations (C.F.R.), section 51.102, requires that one or more public hearings, preceded by at least 30 days' notice and opportunity for public review, must be conducted if requested prior to adopting and submitting to U.S. EPA any SIP revision;

Whereas, the At Berth Regulation was made available to the public with a 30-day public comment period that began when a public notice was released on October 1, 2019;

Whereas, on December 5, 2019, Board Resolution 19-28 identified potential environmental impacts and Board Resolution 20-22 on August 27, 2020 responded to comments for the purposes of the California Environmental Quality Act; and

Whereas, CARB has determined that the At Berth Regulation meet the requirements of the Act to be included in the California SIP, contingent on granting an authorization of federal preemption under Section 209 of the Act.

¹ 42 U.S.C. § 4701 (l).

Whereas, the 2016 State SIP Strategy further included a commitment to develop and bring to the Board for consideration a measure entitled, "Incentive Funding to Achieve Further Emission Reductions from On-Road Heavy-Duty Vehicles";

Whereas, on March 23, 2018, CARB adopted the *South Coast On-Road Heavy-Duty Vehicle Incentive Measure* (South Coast Incentive Measure) to fulfill the measure commitment and demonstrate how 1 tpd NO_x emissions reductions from Carl Moyer incentive heavy-duty truck replacement projects will be quantified towards the State's aggregate commitment in the SIP;

Whereas, CARB submitted the South Coast Incentive Measure to U.S. EPA as a revision to the California SIP and U.S. EPA approved on January 15, 2021 (86 FR 3820);

Whereas, as part of the South Coast Incentive Measure commitment, CARB must provide annual reports to U.S. EPA that contains specific information about the projects funded through the previous year;

Whereas, CARB's South Coast On-Road Heavy-Duty Vehicle Incentive Measure 2021 Progress Report identified 64 completed heavy-duty truck projects achieving 0.06 tpd NO_x emissions reductions;

Whereas, the Carl Moyer Incentive Program is implemented by the local air districts;

Whereas, the South Coast Air Quality Management District (District) implements the Carl Moyer Incentive Program in the Basin;

Whereas, through the Carl Moyer Incentive Program, the District incentivized more cost-effective projects and used other incentive funds to incentivize cleaner heavy-duty truck projects;

Whereas, the South Coast Incentive Measure also requires CARB to adopt and submit substitute measures if U.S. EPA determines by July 1, 2021, that the identified incentive projects are insufficient to achieve the emission reduction commitment;

Whereas, on June 30, 2021, U.S. EPA submitted an insufficiency finding for the South Coast Incentive Measure to CARB thus requiring CARB to adopt and submit a substitute measure;

Whereas, the At Berth Regulation as adopted will achieve emissions reductions of 0.8 tpd NO_x above the 0.3 tpd NO_x in 2023 in the Basin estimated in the 2016 State SIP Strategy;

Whereas, the 0.8 tpd NO_x emissions reductions are accredited towards the South Coast Incentive Measure enforceable commitment in the Basin in 2023;

Whereas, CARB is submitting the At Berth Regulation as a revision to the SIP to address the commitment to provide substitute measure and/or rule that will achieve the emission reductions shortfall from the South Coast Incentive Measure;

Now, therefore, it is ordered that CARB hereby submits to U.S. EPA the At Berth Regulation and requests that U.S. EPA approve it as a revision to the California SIP upon granting an authorization of federal preemption under Section 209 of the Act.

Executed in Sacramento, California, this 22nd day of February 2023.

A handwritten signature in blue ink, appearing to read 'S. Cliff', is positioned above a horizontal line.

Steven S. Cliff, Ph.D., Executive Officer