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Omar Benjamin

OMAR R. BENJAMIN
Executive Director

March 24, 2010

Ms. Mary D. Nichols
Chairman
California Air Resources Board
P.O. Box 2815
Sacramento, CA 95812

RE: **Comments on Proposed Update to Guidelines for Implementation**
Proposition 1B: Goods Movement Emission Reduction Program
CARB Board Consideration on March 25, 2010

Dear Ms. Nichols:

The Port of Oakland ("Port") is pleased to submit its comments on the March 2010 California Air Resources Board ("CARB") Proposed Update to Guidelines for Implementation ("Guidelines") for Proposition 1B: Goods Movement Emission Reduction Program ("Prop 1B"). These comments are intended to supplement my colleague Richard Sinkoff's prior comments submitted to Ms. Barbara Van Gee of your staff in a letter dated March 5, 2010 regarding CARB's Staff Draft Concept Paper. Our prior letter is attached for your reference.

Our supplemental comments are as follows:

Expand Definition of Eligible Costs

In the proposed Guidelines, professional services necessary for the implementation of a sound construction project are ineligible for Prop 1B funding or for acknowledgement by CARB as matching funds. The Port estimates that about 25% of the total cost for building a grid-based shore power system will be spent on engineering design, construction management, inspection, testing, project management and other professional services. This proposed approach further limits the amount of Prop 1B funding available, and therefore increases the burden on local sponsors. It is in the state's best interest to manage its investment effectively by acknowledging and accounting for the value of professional services inherent in a complicated construction project such as the shore power program.

The Port is pleased to see that "increasing the capacity of electrical power to the port" will be considered eligible costs for reimbursement by CARB; however "utility construction or metered costs" are declared ineligible. Increasing electrical power capacity to the port will be performed by the electric utility company. CARB staff have indicated that such improvements are eligible, and the Port recommends further

clarification in the Guidelines. However, despite the Port's prior recommendation, CARB staff continues to exclude vessel modifications that are required to implement shore power. Under CARB's Carl Moyer Program, shore power vessel retrofit work is eligible for funding, yet the proposed Guidelines do not consider vessel retrofit work as part of the emissions reduction system. The Port again respectfully requests that CARB consider vessel modifications part of the scope of a shore power project. This would help local sponsors leverage these private investments to access Prop 1B monies. Vessel retrofits are a critical component to the successful implementation of shore power at California's ports.

Consideration for Public Infrastructure

The construction of grid-based shore power infrastructure will create assets on lands held in trust by the Port for the state. In effect, these assets will be public assets in most if not all circumstances. When the voters approved Prop 1B and when CARB staff first developed guidelines for disbursement of Prop 1B monies, it was envisioned that private companies would be competing for public (i.e. Prop 1B) funds. The Port believes that the caps and restrictions placed on Prop 1B funds were intended to ensure private companies did not "over-use" public funds to create private assets. Clearly, shore power infrastructure does not fit this circumstance and the Guidelines should acknowledge and accommodate this fact.

Eliminate Additional Compliance Requirements and Maintain Consistency with Regulation

While early emissions reductions remain a substantial challenge given the timing of the CARB "shore power" regulation ("the Regulation"), additional emissions reductions above the regulatory requirements are difficult if not impossible to guarantee to the state. As described in our March 5, 2010 letter, the Regulation is already extremely aggressive and, once implemented, will achieve significant emissions reductions benefits. However the requirements for additional emissions reductions are a major hurdle for the Port and its customers. Without substantial assistance from the state, it is unclear whether vessel fleets will be able to comply with the Regulation at the Port of Oakland. This will dramatically and negatively impact the economy of the City of Oakland, the Northern California Region, and the state of California.

The Regulation sets forth compliance requirements on a vessel fleet basis, regardless of which berths/terminals the fleet serves. However, the Guidelines impose requirements on a berth basis. This inconsistency presents significant challenges for the Port and its customers:

- The equipment owner, which the Guidelines hold responsible for "extra" compliance, is most likely to be either a marine terminal operator or the Port, not the vessel owner. At the Port, vessel owners and terminal operators may both be subsidiaries of the same parent company in some cases, but they are typically independently operated. If a marine terminal operator or the Port agrees to the

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Prop 1B terms, it must have some assurance that a shipping line will be willing to meet the higher compliance threshold required under the grant for a 10-year period. Shipping lines regularly switch marine terminals based on a number of factors including quality of service and competitive pricing.

- It may be very difficult, if not impossible, to attract new customers to the terminal if those customers are required to achieve a more aggressive compliance schedule than required under the Regulation. As a result, acceptance of Prop 1B funds exposes the equipment owner to additional business risk within a port and potentially across ports, creating a disincentive for early and extra emission reductions as required by the Guidelines.

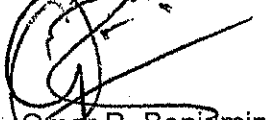
Under the proposed Guidelines, the vessel and the marine terminal operator and/or port would be required to track compliance and report to CARB. It would be far more effective and efficient if the vessel owners were responsible for this reporting, consistent with the Regulation's intent. The vessel owners are in the best position to track auxiliary engine usage and report back to CARB.

Administrative Costs

The Guidelines propose limiting costs for administration of the grants by the local air district to 3%, while the port authority would not be eligible. This is contrary to CARB's reference in its rule-making documents that "all parties" (vessel owners, terminal operators, and ports) work together since each party controls or can facilitate a key element of a shore power program. The Port requests the administrative limits be equal (and at the proposed 3% level) regardless of which public agency serves as the local sponsor.

Thank you again for the opportunity to comment on the Guidelines. The Port is doing its best to assist its customers to meet the terms of the Regulation within the financial reality of our current economic environment and the Port's unique budget constraints. The Port and its customers need CARB's assistance to ensure regulatory compliance, not an additional burden to an already challenging endeavor. Let me assure you that the Port greatly values its collaborative relationship with CARB as we continue to work together to improve air quality and public health in a manner that is supportive of economic recovery and growth.

Sincerely,



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cc: Cynthia Marvin, Assistant Division Chief, CARB
Barbara Van Gee, Manager, Goods Movement Programs Section, CARB
Richard Sinkoff, Environmental Division Director, Port of Oakland
James Kwon, Maritime Director, Port of Oakland
Delphine Prévost, Senior Maritime Projects Administrator, Port of Oakland