

BOARD MEETING DATE: February 3, 2017

AGENDA NO. 20

REPORT: Mobile Source Committee

SYNOPSIS: The Mobile Source Committee met on Friday, January 20, 2017. Following is a summary of that meeting. The next Mobile Source Committee meeting is scheduled for Friday, February 17, 2017 at 9:00 a.m.

RECOMMENDED ACTION:  
Receive and file.

Dr. Joseph Lyou, Vice Chair  
Mobile Source Committee

PMF:afm

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### **Attendance**

Committee Members Dr. Joseph Lyou, Sheila Kuehl, Larry McCallon and Judith Mitchell attended at SCAQMD headquarters. Committee Chair Dr. Clark E. Parker, Sr. was absent; Vice Chair Dr. Lyou called the meeting to order at 9:00 a.m.

### **INFORMATIONAL ITEMS:**

#### **1) SCAQMD Mobile Source Authority**

Barbara Baird, Chief Deputy Counsel, presented on this item. Ms. Baird explained that under state law, in general CARB has authority over motor vehicles, while the air districts have authority over all other sources. She explained the exceptions to this principle. Air districts are authorized under state law to adopt indirect source control measures and transportation control measures, and the SCAQMD may adopt fleet rules, which will be discussed in the next item. The Clean Air Act (CAA) preempts most state and local emission standards for motor vehicles and non-road engines, except CARB may adopt such measures with U.S. EPA approval. But the Clean Air Act does not preempt “use and operation” measures that are not tailpipe standards, such as idling limits. Also SCAQMD may adopt rules that offer a

preempted alternative if there is a reasonable non-preempted alternative method of compliance.

Transportation control measures are strategies designed to reduce vehicle trips, vehicle use, vehicle miles traveled, vehicle idling, or traffic congestion. These are not emission standards and are not preempted by the CAA. Examples are HOV lanes and CARB's idling rules. CAA Section 108(f) lists examples. Vehicle Code Section 21 prohibits local regulation on areas covered by the Vehicle Code and may limit transportation controls.

Indirect source rules apply to facilities or installations that attract mobile sources. (CAA §110(a)(5)(C). State law authorizes districts to implement such rules; Health & Safety Code §40716, 40440(a). An example is the San Joaquin Valley rule that requires new development to reduce emissions by a specific percentage, or pay a fee which the district uses to reduce emissions from other sources. Another example is the SCAQMD ridesharing Rule 2202 which offers a variety of compliance options. Characteristics of indirect source rules are that they apply to the entire facility or site, not a vehicle or a fleet; *National Association of Home Builders v. San Joaquin Valley Unified Air Pollution Control District*, 627 F. 3d. 730 (9<sup>th</sup> Cir. 2010). As a result, they are not preempted emission standards under the CAA. Often they can be met through operational limits, not tailpipe limits on mobile sources. The facility-based measures in the 2016 AQMP apply to indirect sources.

Indirect sources have argued that other federal statutes besides the Clean Air Act are preemptive, including the Interstate Commerce Commission Termination Act regarding rail operations and the Federal Aviation Administration Authorization Act regarding aircraft and commercial trucking. However, the Ninth Circuit has held that once a rule is approved by U.S. EPA into the state implementation plan, it is entitled to be "harmonized" with the allegedly preemptive federal statute and upheld wherever possible; *Association of American Railroads v. SCAQMD*, 622 F. 3d 1094 (9<sup>th</sup> Cir. 2010).

With regard to what SCAQMD can do if the Ports do not live up to any voluntary agreement they may make to reduce emissions, which was a question raised at the last Board Meeting, SCAQMD cannot adopt a rule requiring specific "tailpipe" standards for mobile sources. SCAQMD can adopt a rule requiring facility-wide or port-wide emission reductions as an indirect source rule, which will be more likely to be upheld once approved by U.S. EPA.

Ms. Baird briefly summarized certain arguments being made by the Ports, such as that the Tidelands Trust would prohibit SCAQMD adopting a rule applicable to them, and that they have no control over their tenants' activities. Ms. Baird noted that the Ports' previous programs such as the Clean Trucks Program indicate that

they do have certain control over activities at the Ports and these types of programs are not inconsistent with the Tidelands Trust.

Supervisor Kuehl asked about warehouse areas, whether they could be aggregated, and whether a rule could consider cumulative impacts. Ms. Baird responded that there needs to be a responsible party for the rule to apply to. If one entity is responsible for more than one warehouse they could be aggregated. Rules can include more stringent requirements for facilities in certain locations, such as our toxics rules which include more stringent requirements for sources near sensitive receptors.

Councilmember Mitchell asked whether we need to state specific names of warehouses subject to a rule, and can we distinguish among different warehouses such as based on size? Ms. Baird replied that each warehouse does not need to be listed in the rule, and a rule can make distinctions among different types of warehouses.

Dr. Lyou asked how far the District's authority goes under use and operation. Ms. Baird replied that we can adopt limits on operations, such as mass caps. Dr. Philip Fine, Deputy Executive Officer/Planning, Rules Development & Area Sources, reminded the Committee that the SCAQMD can adopt a rule that offers an option between complying with a use limit and a tailpipe standard.

Dr. Lyou asked if there could be a rule that says you can buy a certain vehicle but you cannot use it. Ms. Baird replied that this would probably be considered as a preempted emission standard.

Dr. Lyou asked whether our authority extends to roadways, e.g. could we require clean vehicle lanes on the 710 Freeway and if this would be considered a Transportation Control Measure (TCM)? Ms. Baird said this would fit within the definition of a TCM, but further research regarding the transportation planning process and federal requirements would be needed to provide a complete answer.

Dr. Lyou recommended that the SCAQMD should use partnerships with other entities and should maximize use of our mobile source authority.

There were no public comments on this item.

## **2) Update on South Coast AQMD Clean Fleet Vehicle Rules**

Henry Hogo, Assistant Deputy Executive Officer/Science & Technology Advancement, provided an update on the implementation of the SCAQMD Clean Fleet Vehicle Rules. Mr. Hogo provided background information regarding the

SCAQMD's authority under the Health and Safety Code (HSC) to adopt regulations that require public and private fleets with 15 or more vehicles to acquire alternative fuel vehicles at the time the fleet is purchasing or leasing new vehicles to add or replace vehicles to their fleet. HSC Section 40447.5 provides the SCAQMD primary authority. In addition, HSC Section 40919(a)(4) provides that air districts with serious or worse nonattainment designations shall include measures in their attainment plan to "achieve the use of low-emission motor vehicles". The Draft Final 2016 AQMP contains measures that meet the provisions of this section. The definition of low-emission vehicles as defined in HSC 39037.05 precludes any vehicle operating on diesel fuel. Mr. Hogo discussed the various court decisions on the Fleet Rules and the settlement with the Engine Manufacturers Association that the Fleet Rules would be enforced only on vehicles owned or leased by public agencies or vehicles owned by private fleets providing services to public agencies under contract or exclusive agreements.

Mr. Hogo discussed the implementation of the Fleet Rules since Board adoption in 2000 and 2001. There are seven fleet rules that cover light-duty to heavy-duty vehicles owned by public agencies and certain private fleets which are under contract or exclusive agreement with public agencies, such as refuse collection services. Mr. Hogo indicated that Fleet Rule implementation has been very successful over the last 15 years. Mr. Hogo presented a snapshot of the number of natural gas vehicles operating in the SCAQMD in 2004 compared to the number operating in 2016. The number of transit buses doubled in this time period while the number of refuse trucks tripled in the same period. Mr. Hogo indicated that the number of natural gas refueling stations increased from 23 stations to over 200 stations from 2004 to 2016.

Mr. Hogo discussed staff's efforts to encourage fleets to purchase near-zero alternative fuel vehicles and zero-emission vehicles to comply with the Fleet Rules and the funding available for the purchase of near-zero and zero emission vehicles. In addition, an 11.9 liter near-zero natural gas engine is under development and will be available in the next 12-18 months. There was a discussion on CARB's efforts to adopt new ultra-low-NOx engine standards. Mr. Hogo concluded with a discussion of the Draft Final 2016 AQMP Control Measure MOB-08 where potentially the Fleet Rules could be expanded to the private sector. However, based on the current provisions of HSC Section 40447.5, legislative changes may be required for the rules to be effective in helping the region attain federal air quality standards in the near-term. As such, there is a desire to work with the trucking industry to see if there are actions that could lead to emission reduction in the near-term.

Dr. Lyou asked whether a vehicle with an overhead catenary providing power to an electric motor, but also operating on diesel fuel when the overhead catenary is not connected, would be allowed under the Fleet Rules. Mr. Hogo indicated that it

would not be allowed. However, the Fleet Rules do allow a small number of advanced technology vehicles if the vehicles have experimental permits. In addition, there are provisions to allow diesel vehicles if there are no commercially available alternative fueled vehicles.

Supervisor Kuehl asked for clarification regarding the gasoline definition under HSC Section 39037.05. Mr. Hogo indicated that the standards are established by CARB.

Supervisor Kuehl asked what percentage of the total vehicle population by vocation that the natural gas vehicles represent. Mr. Hogo indicated that it depended on the vocation. For transit buses, all of the large transit agencies purchase alternative fueled vehicles and the transit fleet is almost 100 percent natural gas buses. For refuse collection vehicles, it is around 50 percent since the fleet rules do not apply to private fleets that are not under contract or exclusive agreement with public agencies. Dr. Lyou commented that with refuse trucks, a large number of natural gas trucks have been purchased which help reduce the differential cost of the trucks compared to their diesel counterparts. Mayor Pro Tem McCallon noted that the weight of the refuse trucks contribute to the deterioration of surface streets.

Councilmember Mitchell commented that there are efforts underway to develop a near-zero diesel engine. Karen Magliano – Division Chief/Air Quality Planning and Science Division at CARB, responded that this will be beneficial, especially for interstate fleets.

Supervisor Kuehl commented that there has been a large amount of resources placed on advanced technology development and asked if there are tangible results from these efforts. Dr. Lyou commented that a Clean Fuels Program Annual Report will be brought to the Board which will discuss the results of many of these efforts. Wayne Natri, Executive Officer, commented that there are many ways to measure the results and reduction in premature deaths is one of the measurable health impacts. Supervisor Kuehl asked how progress in air quality itself is measured. Dr. Lyou indicated that it can be done through both emission modeling and air quality measurements. Mayor Pro Tem McCallon commented that results are also dependent on cost-effectiveness which varies depending on the technology. Dr. Lyou indicated that benefits from some investments may occur in the longer-term.

Supervisor Kuehl asked if there are fleets that are being incentivized that are not subject to the Fleet Rules. Mr. Hogo indicated that it is primarily private fleets in the goods movement sector. Councilmember Mitchell asked for a clarification on the SCAQMD's authority over drayage fleets and how getting reductions from this sector is addressed. Dr. Fine indicated that a private fleet rule could be developed, but with the challenges discussed. Ms. Magliano indicated that the state has a drayage truck regulation which is now part of the Truck and Bus Regulation. The

question is how to effectively move forward from the current regulation. Mr. Hogo commented that SCAQMD staff is working with CARB to encourage private fleets to purchase zero and near-zero emission vehicles as they comply with the Truck and Bus Regulation.

Dr. Lyou asked if there are activities to update the fleet rule provisions of the Health and Safety Code. Councilmember Mitchell indicated that there have not been. Dr. Lyou requested that the Legislative Committee consider amendments to the HSC provision.

Mr. Harvey Eder commented that the 2016 AQMP is a “natural gas” plan and it violated the HSC Section 53002(b) provisions on fossil-based fuels. Mr. Eder indicated that he has been talking with staff on the need to go to solar as soon as possible. Mr. Nastri indicated that he plans to meet with Mr. Eder to discuss his comments.

Mr. Bill Pearce, Boeing Company, commented that his company has been making significant investments in on-road vehicles and off-road equipment in order to meet CARB requirements. Mr. Pearce wanted to make sure that as the SCAQMD is considering new requirements that their efforts will be taken into account.

### **3) Draft 2016 AQMP Proposed Approach on Mobile Source**

Dr. Philip Fine, outlined the overall mobile source strategy proposed in the 2016 Air Quality Management Plan (AQMP or Plan) including the State-level commitment for mobile source emission reduction needs. He noted the strategy would be fulfilled with a combination of proposed regulations, such as ultra-low-NOx engine standards, and advanced deployment of cleaner technologies through new regulatory action, system efficiencies, local facility-based measures, and incentives.

Dr Fine discussed the proposed facility-based measures for ports, railyards, warehouses, airports and new and re-development that would involve working groups to identify actions that result in quantifiable, enforceable emission reductions. If, after one year, there is no agreement, the staff can quickly proceed to formal rulemaking.

Finally, Dr. Fine highlighted the mobile source control measure (MOB-08) that commits to enhanced fleet rules where feasible through rule amendments that could be designed like the SOON program, including an enforceable mechanism to accelerate deployment of low-NOx engines, and/or expand public fleet rules to private fleets. Voluntary or non-monetary incentives are other potential options to achieve reductions.

Supervisor Kuehl sought clarification that staff would report to the Board with proposed recommendations on how to proceed with implementing the facility-based control measures after one year. Staff emphasized that the year would be spent in a collaborative effort with affected stakeholders similar to a formal rulemaking process. Dr. Lyou viewed rulemaking as an important option in negotiating any agreement.

Councilmember Mitchell asked if the timeline was provided in the Plan and staff affirmed that the timeline to reporting to the Board is provided in each of the facility-based control measure write-ups (*Appendix IV-A*). Mr. Nastri added that the pivot to rulemaking after one year if no agreement is reached was included during the revisions to the original draft Plan. Dr. Lyou suggested strong maintenance of transparency and public participation to avoid past controversial actions such as CARB's contentious MOU with the railroads.

David Pettit from the Natural Resources Defense Council (NRDC) stressed the need for the AQMP to have enforceable measures and not solely rely on CARB to achieve reductions. He was concerned that the facility-based measures did not provide, in terms of emission reductions and timing, the specific trigger for the pivot to rulemaking, especially since the specific emission reductions for the facility-based measures were not included in the Plan.

#### **WRITTEN REPORTS:**

##### **4) Rule 2202 Activity Report**

The report was received as submitted.

##### **5) Monthly Report on Environmental Justice Initiatives – CEQA Document Commenting Update**

The report was received as submitted.

#### **OTHER BUSINESS:**

None

#### **PUBLIC COMMENTS:**

None

The meeting was adjourned at approximately 10:29 a.m.

#### **Attachment**

Attendance Roster

**SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT  
MOBILE SOURCE COMMITTEE MEETING  
Attendance Roster – January 20, 2017**

Dr. Joseph Lyou .....	SCAQMD Governing Board
Supervisor Sheila Kuehl .....	SCAQMD Governing Board
Mayor Pro Tem Larry McCallon.....	SCAQMD Governing Board
Councilmember Judith Mitchell .....	SCAQMD Governing Board
Board Consultant Mark Abramowitz .....	SCAQMD Governing Board (Lyou)
Board Consultant Ron Ketcham .....	SCAQMD Governing Board (McCallon)
Board Consultant Marisa Perez .....	SCAQMD Governing Board (Mitchell)
Karen Magliano .....	CARB Staff
Rick Cameron .....	Port of Long Beach
Heather Tomley .....	Port of Long Beach
Chris Cannon .....	Port of Los Angeles
Curt Coleman.....	Southern California Air Quality Alliance
Harvey Eder.....	Public Solar Power Coalition
Matt Francois .....	Rutan & Tucker
Sue Gornick .....	Western States Petroleum Association
Peter Herzog .....	NAIOP SoCal and Inland Empire
William LaMarr.....	California Small Business Alliance
Noel Muyco .....	SoCal Gas
Bill Pearce.....	The Boeing Company
David Rothbart .....	L.A. Sanitation Districts
Susan Stark .....	Tesoro
Wayne Nastri .....	SCAQMD Staff
Jill Whynot .....	SCAQMD Staff
Philip Fine.....	SCAQMD Staff
Barbara Baird.....	SCAQMD Staff
Matt Miyasato.....	SCAQMD Staff
Henry Hogo .....	SCAQMD Staff
Laki Tisopulos .....	SCAQMD Staff
Sam Atwood .....	SCAQMD Staff
Naveen Berry .....	SCAQMD Staff
Arlene Farol.....	SCAQMD Staff
Carol Gomez.....	SCAQMD Staff
Monika Kim.....	SCAQMD Staff
Michael Krause.....	SCAQMD Staff
Megan Lorenz.....	SCAQMD Staff
Fred Minassian .....	SCAQMD Staff
Anthony Oliver .....	SCAQMD Staff
Dean Saito.....	SCAQMD Staff
Ryan Stromar .....	SCAQMD Staff
Veera Tyagi .....	SCAQMD Staff
Kim White .....	SCAQMD Staff
Jillian Wong.....	SCAQMD Staff