

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE CALIFORNIA AIR RESOURCES BOARD AND
SAN DIEGO COUNTY AIR POLLUTION CONTROL 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 San Diego County Air Pollution Control District (SDCAPCD). ARB and SDCAPCD 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 Diego County Air Pollution Control District with certain regulations adopted by ARB for motor vehicles, off-road or nonvehicle engine or vehicle categories, and motor vehicle fuels, and (2) establish a collaborative enforcement model that builds upon the Parties' extensive enforcement experience.
- 2.3 This MOU does not 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 SDCAPCD. Pursuant to California Health and Safety Code section 40701, SDCAPCD 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 SDCAPCD 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, SDCAPCD'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.

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

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

3.6.2 "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).

3.6.3 "Heavy Duty Diesel Smoke Emission Testing and Heavy-Duty Vehicle Emission Control System Inspection" (California Code of Regulations, title 13, sections 2180 through 2184) (HDVIP and ECL).

3.6.4 "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).

3.6.5 "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).

- 3.6.6 “Airborne Toxic Control Measure to Limit School Bus Idling and Idling at Schools” (California Code of Regulations, title 13, section 2480) (School Bus Idling Regulation).
- 3.6.7 “Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants from In-Use On-Road Diesel-Fueled Vehicles” (Title 13, California Code of Regulations, Section 2025) (Statewide Truck and Bus 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 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.

- 3.8.1.5 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.)
- 3.8.2 Existing SDCAPCD Enforcement Authority. Pursuant to Health and Safety Code section 40001, SDCAPCD 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.
- 3.8.2.1 SDCAPCD is authorized to enforce the “Airborne Toxic Control Measure to Limit Diesel-Fueled Commercial Motor Vehicle Idling” (California Code of Regulations, title 13, section 2485) (Commercial Vehicle Idling Regulation) by subsection (f) of that section.
- 3.8.2.2 SDCAPCD is authorized to enforce the “Regulation to Control Emissions from In-Use On-Road Diesel-Fueled Heavy-Duty Drayage Trucks” (California Code of Regulations, title 13, section 2027(i)) (Drayage Truck Regulation) by subsection (i) of that section.
- 3.8.2.3 SDCAPCD is authorized to enforce the “Airborne Toxic Control Measure to Limit School Bus Idling and Idling at Schools” (California Code of Regulations, title 13, section 2480) (School Bus Idling Regulation), by section (g) of that section and Health and Safety Code section 39642.
- 3.8.2.4 SDCAPCD is authorized to enforce idling prohibitions at marine terminals pursuant to Health and Safety Code section 40720(a)(3).
- 3.8.2.5 SDCAPCD is generally authorized and required to enforce adopted Air Toxic Control Measures for non-vehicular sources pursuant to section 39666(d) of the Health and Safety Code.
- 3.9 Need for Enforcement of ARB Regulations. 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 SDCAPCD.

4. AGREEMENT

4.1 Authorization to Enforce

- 4.1.1 ARB authorizes SDCAPCD 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 SDCAPCD 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 SDCAPCD.
- 4.1.4 This authorization shall not be interpreted to impose upon SDCAPCD any obligation to enforce any of the regulations listed in section 3.6 of this MOU. This authorization shall not be interpreted to diminish in any way the existing enforcement authority of the SDCAPCD as described above or as provided for in state and federal law.
- 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 SDCAPCD shall carry out enforcement activities pursuant to this MOU in accordance with ARB regulations, rules, policy, guidance, and training.
- 4.2.2 SDCAPCD enforcement activities pursuant to this MOU shall be carried out by qualified inspectors or trained enforcement staff.
- 4.2.3 ARB shall provide SDCAPCD with periodic training as needed.
- 4.2.4 ARB will provide SDCAPCD and its employees with electronic database access to registration and reporting data submitted to ARB and necessary for determining compliance with regulations included in section 3.6 of this MOU.
 - 4.2.4.1 To the extent consistent with the California Public Records Act, SDCAPCD and its employees will maintain the confidentiality of this information. Copies of any requests for information SDCAPCD and its employees may receive through Public Records Act or alternative avenues related to this data will be provided to CARB. SDCAPCD and

its employees will not disclose the information unless disclosure is legally mandated.

4.2.4.2 SDCAPCD will provide ARB with a list of enforcement personnel to whom database access will be granted under this MOU. ARB will individually assign usernames and passwords to enforcement personnel on this list. SDCAPCD and its employees will not share or otherwise distribute individual usernames and passwords. SDCAPCD will maintain this list and will provide ARB with updates to the list as enforcement personnel changes occur. SDCAPCD and its employees will not use reported data for purposes other than the enforcement of regulations identified in section 3.6 of this MOU, without written consent of ARB program staff.

4.2.5 In the event of a disagreement between SDCAPCD 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 SDCAPCD personnel on all inspections and other enforcement activities and may review any SDCAPCD records related to enforcement of the regulations listed in section 3.6. SDCAPCD 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 SDCAPCD in enforcing the ARB regulations and shall review and discuss any evaluations with SDCAPCD with a primary aim of ensuring consistency between ARB and SDCAPCD enforcement activities.

4.3.3 For all inspection activities conducted pursuant to this MOU, SDCAPCD will complete a Daily Vehicle Inspection Tally Sheet for each discrete location and date that an inspection occurs. By the fifth business day of each month, SDCAPCD will mail completed Daily Vehicle Tally Sheet forms from the previous month to ARB, at the address in section 4.13, except that the tally sheets shall be sent to "Attention: Field Enforcement Section."

4.4 Enforcement Coordination

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

- 4.4.2 SDCAPCD will provide advance notice to ARB of pre-planned targeted enforcement activities and coordinate as necessary joint inspections and investigations.
- 4.4.3 SDCAPCD will refer all NOV/citations to ARB for resolution, unless otherwise agreed to by both parties. At least weekly, SDCAPCD will mail all SDCAPCD-issued NOVs/citations to ARB, at the address in section 4.13, except that the NOVs/citations shall be sent to "Attention: Citation, Registration, & Hotline Section." 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 SDCAPCD 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.

April 1, 2014

ARB – SDCAPCD MOU
ENFORCEMENT OF ARB REGULATIONS

- 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:

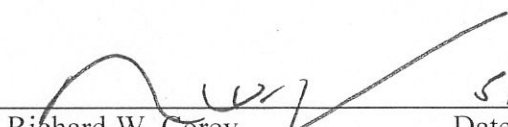
To ARB: Attention: James Ryden, Chief
 Enforcement Division
 California Air Resources Board
 1001 "I" Street
 P.O. Box 2815
 Sacramento, California 95812

To SDCAPCD: Attention: Robert Kard
 Air Pollution Control Officer
 San Diego County Air Pollution Control District
 10124 Old Grove Road
 San Diego, California 92131-1649

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

CALIFORNIA AIR RESOURCES BOARD

SAN DIEGO COUNTY APCD



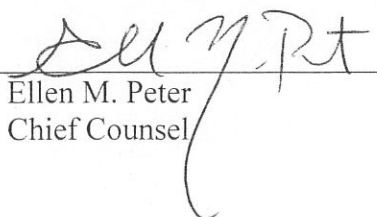
Richard W. Corey 5/21/2014
Executive Officer Date



Robert Kard 4/2/2014
Air Pollution Control Officer Date

Approved as to form

Approved as to form



Ellen M. Peter 5/21/2014
Chief Counsel Date



Paula Forbis 4/2/14
Senior Deputy County Counsel Date