

MEMORANDUM OF UNDERSTANDING BETWEEN THE CALIFORNIA AIR RESOURCES BOARD AND SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT REGARDING ENFORCEMENT OF SELECTED CALIFORNIA AIR RESOURCES BOARD REGULATIONS

1. PARTIES

This Memorandum of Understanding is entered into by and between the California Air Resources Board (CARB or Board) and the San Diego County Air Pollution Control District (SDCAPCD). CARB and SDCAPCD are collectively referred to herein as “the Parties.”

2. PURPOSE

- 2.1 The Parties, two governmental agencies, share a common mission and goal of protecting the People of the State of California through the regulation of sources of air pollutants and the enforcement of such regulations. In entering into this Memorandum of Understanding (MOU), the Parties are committed to pursuing the enforcement of specified regulations enacted by the CARB 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 CARB 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.
- 2.4 This memorandum supersedes that prior memoranda between the Parties dated August 16, 2017, that was fully executed on November 7, 2017 as to matters addressed herein.

3. BACKGROUND

- 3.1 Powers of CARB. Pursuant to California Health and Safety Code section 39603, CARB 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 CARB and SDCAPCD and establishes all 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, CARB'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. In 1998, pursuant to Health and Safety Code sections 39650 through 39675, CARB identified diesel particulate matter (PM) as a toxic air contaminant (TAC) with no specified threshold exposure level. After identifying diesel PM as a TAC, CARB conducted an assessment of the need for regulation pursuant to Health and Safety Code sections 39658, 39665, 39666, and 39667. In 2000, CARB 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 CARB Regulations. In implementing its plans and carrying out its responsibilities under state law, CARB 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 Unit 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” (California Code of Regulations, title 13, Section 2025) (Statewide Truck and Bus Regulation).
 - 3.6.8 “Airborne Toxic Control Measure for Commercial Harbor Craft” (California Code of Regulations, title 17, section 93118.5) (Commercial Harbor Craft Regulation).
 - 3.6.9 “Low Sulfur Fuel Requirement, Emission Limits and Other Requirements for Commercial Harbor Craft” (California Code of Regulations, title 13, section 2299.5)
- 3.7 Legal Authority for CARB Regulations. For each of the regulations listed above, CARB’s authority for adoption of the regulations is (1) one or more provisions related to its authority to adopt emissions standards and other emissions-related requirements for motor vehicles 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 CARB 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 CARB 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 CARB Executive Officer.
- 3.8.1.5 In carrying out CARB enforcement responsibilities, the CARB 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) (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 CARB Regulations. Compliance with the CARB 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 CARB authorizes SDCAPCD to conduct compliance inspections to determine compliance with the regulations listed in section 3.6 of this MOU, as well as any subsequent amendments to those regulations, to the extent such authority does not already exist as described in section 3.8.2 of this MOU.
- 4.1.2 CARB 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, to the extent such authority does not already exist as described in section 3.8.2 of this MOU.
- 4.1.3 Except as stated in 4.1.4, CARB authorizes SDCAPCD to take such actions as may be necessary to resolve violations applicable to individual non-road vehicles, engines or equipment units identified by SDCAPCD inspectors or enforcement staff upon inspection or investigation, including verification of compliance and assessment of administrative or civil penalties, for the following regulations:
 - 4.1.3.1 "Regulation for In-Use Off-Road Diesel Vehicles" (California Code of Regulations, title 13, sections 2449(d)(2) & (d)(6), 2449(f), and 2449(k)) (In-Use Construction Equipment Regulation).
 - 4.1.3.2 "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, sections 2477.5(a) and 2477.5(e)). (Transport Refrigeration Unit Regulation).
- 4.1.4 This agreement shall not be interpreted as authorizing SDCAPCD to investigate or enforce provisions of the regulations identified in section 4.1.3 that apply to or establish requirements applicable to a fleet of vehicles or equipment, including fleet-wide emission standards, as defined by the respective regulations.
- 4.1.5 CARB retains enforcement authority to enforce the regulations listed in section 3.6, and this MOU shall not be interpreted to diminish in any manner CARB authority to enforce its regulations, either alone or jointly with SDCAPCD.
- 4.1.6 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.

4.1.7 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 CARB 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 CARB shall provide SDCAPCD with periodic training as needed.

4.2.4 In the event of a disagreement between SDCAPCD and a third party regarding the interpretation of a CARB regulation, CARB will be notified and will provide assistance.

4.3 CARB Oversight

4.3.1 CARB 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 CARB personnel on inspections for purposes of training, ensuring consistency, and joint enforcement.

4.3.2 CARB may periodically evaluate the performance of SDCAPCD in enforcing the CARB regulations and shall review and discuss any evaluations with SDCAPCD with a primary aim of ensuring consistency between CARB and SDCAPCD enforcement activities.

4.4 Enforcement Coordination

4.4.1 SDCAPCD shall use CARB-approved inspection, NOV/citation, SDCAPCD enforcement correspondence templates and recordkeeping forms, developed either by CARB or SDCAPCD.

4.4.2 SDCAPCD will provide advance notice to CARB of pre-planned targeted enforcement activities and coordinate as necessary joint inspections and investigations.

4.4.3 Upon request by CARB staff, SDCAPCD shall provide to CARB all information related to specific NOVs/citations that SDCAPCD resolves pursuant to section 4.1.3.

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.

- 4.5.1 When SDCAPCD issues an NOV/citation for violation of a regulation listed in section 3.6 and refers the violation to CARB for litigation or settlement, any civil penalties for the violation shall be shared equally or reimbursed as appropriate between the Parties.
- 4.5.2 When SDCAPCD issues a NOV for violation of a regulation listed in section 4.1.3 and resolves such violation independently, any penalties for the violation may be deposited into the SDCAPCD account consistent with practices used for other locally enforceable ATCM violations.
- 4.5.3 SDCAPCD shall coordinate with CARB and consider CARB's enforcement policy to ensure that penalties assessed by SDCAPCD pursuant to section 4.1.3 are consistent with penalties assessed for similar violations identified and resolved by CARB.

4.6 Information Sharing and Confidentiality.

4.6.1 Weekly Informational Submittals.

4.6.1.1 Except as authorized by sections 3.8.2 or 4.1.3, SDCAPCD will refer all NOV/citations issued pursuant to this agreement to CARB for resolution, unless otherwise agreed to by both parties. At least weekly, SDCAPCD will mail all SDCAPCD-issued NOVs/citations to CARB, at the address in section 4.14, except that the NOVs/citations shall be sent to "Attention: Citation and Hotline Section." CARB may pursue litigation or settlement using the authority, mechanisms, and remedies available to it under California law.

4.6.2 Monthly Information Submittal.

4.6.2.1 For all inspection activities conducted pursuant to this MOU, except for marine inspections as authorized in 3.6.8 and 3.6.9, SDCAPCD will complete a monthly workload and performance report. Monthly workload and performance reports shall be submitted within 4 weeks after the close of each month and shall include:

- Number of inspections conducted per program and how many occurred in Environmental Justice communities.
- Number of NOVs/citations issued monthly
- Number of NOVs/citations/investigations forwarded to CARB for resolution monthly
- Number of NOVs/citations retained by SDCAPCD for resolution monthly

4.6.2.2 For the Commercial Harbor Craft Regulations in sections 3.6.8 and 3.6.9:

For CHC inspection activity, SDCAPCD may use their preferred method of data collection/recording. On a monthly basis, SDCAPCD will submit, at minimum, all applicable data captured by CARB's Commercial Harbor Craft Inspection Form for every vessel inspection conducted for that month in an excel spreadsheet by the second week of each following month via email to chcenforcement@arb.ca.gov.

For suspected CHC violations where NOVs have not been issued or for unsettled NOVs/citations being referred to CARB, SDAPCD will provide all investigative reports and supporting documentation to CARB for resolution, unless otherwise agreed upon by both parties. At least monthly, SDAPCD will mail investigative reports and supporting documentation to:

Attention: Railroad and Marine Enforcement Section
Enforcement Division
California Air Resources Board
8340 Ferguson Ave
Sacramento, California 95828

CARB may pursue litigation or settlement using the authority, mechanisms, and remedies available to it under California laws

4.6.3 Annual Information Submittals. SDCAPCD shall provide a semi-annual report to CARB, by August 1 for the period of January 1 through June 30, and by February 1 for the period of July 1 through December 31, that includes the following information:

- Number of inspections conducted
- Number of NOVs/citations issued monthly
- Number of NOVs/citations/investigations forwarded to CARB for resolution monthly
- Number of NOVs/citations retained by SDCAPCD for resolution monthly

Additional information for each NOVs/citations retained by SDCAPCD for resolution pursuant to section 4.1.3:

- NOV/citation number
- Date NOV/citation issued
- Name of person and/or company to which the NOV/citation was issued
- License plate number and/or Vehicle Identification Number (VIN)
- CARB Equipment Registration (ARBER) number for Transport Refrigeration Units, if available
- CARB Equipment Identification Number (EIN) for off-road equipment, if available
- *Continued on next page...*

- A copy of the NOV/citation
- If resolved, final penalty and late fees paid and date paid

4.6.4 Access to Data CARB will provide SDCAPCD and its employees with access to registration and reporting data submitted to CARB for determining compliance with regulations included in section 3.6 of this MOU.

4.6.4.1 SDCAPCD will provide CARB with a list of inspectors to whom data access will be granted under this contract. Each inspector on this list must sign the CARB Regulatory Reporting Data Confidentiality Agreement Form that will be attached to the contract (Attachment #1). CARB will individually assign usernames and passwords as necessary to inspectors 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 CARB with updates to the list as personnel changes occur. SDCAPCD and its employees will not use reported data for purposes other than the enforcement of regulations identified above without written consent of CARB program staff.

4.6.5 Public Disclosures of Confidential Information. To the extent consistent with the California Public Records Act, SDCAPCD and its employees will maintain the confidentiality of any information collected pursuant to this agreement, including information collected during inspections and investigations and information contained within CARB database(s) to which SDCAPCD staff have been granted access. 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. SDCAPCD agrees to not disclose such information unless SDCAPCD legal counsel has determined that disclosure is legally mandated after consultation with CARB attorneys.

4.7 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.

4.8 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.

4.9 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.

- 4.10 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.
- 4.11 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.
- 4.12 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.
- 4.13 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.
- 4.14 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 CARB: Attention: Dr. Todd P. Sax, Chief
 Enforcement Division
 California Air Resources Board
 8340 Ferguson Ave
 Sacramento, California 95828

To SDCAPCD: Attention: Paula Forbis
 Interim 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




12/13/2021

Richard W. Corey
Executive Officer

Date

Approved as to form



12/13/2021

Ellen M. Peter
Chief Counsel

Date

Paula Forbis

Digitally signed by Paula Forbis
Date: 2021.12.09 11:55:03
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Paula Forbis
Interim Air Pollution Control Officer

Date

Approved as to form

Rodney.Lorang@sdcounty.ca.gov

12/08/2021

Rodney Lorang
Senior Deputy County Counsel

Date