

FILE NUMBER: 2024-330

DATE: Tuesday, September 10, 2024

SUBJECT: Progress Report on an Interagency MOU to Support Implementation of the MCAS and Portside CERP

DESCRIPTION: Presentation and Direction to Staff Regarding a Preliminary Memorandum of Understanding (MOU) Between the San Diego Unified Port District and the San Diego County Air Pollution Control District to Support Further Implementation of the Maritime Clean Air Strategy (MCAS) and Portside Community Emission Reduction Plan (CERP)

EXECUTIVE SUMMARY:

Assembly Bill 423 (AB 423) directed the San Diego County Air Pollution Control District (APCD) to consider the development of indirect source rules (ISRs) to address pollution from mobile sources including ports, warehouses, and distribution centers. Following the directive from AB 423, APCD staff researched potential ISR concepts for the San Diego Unified Port District (District). In place of an ISR focused on ports, APCD staff recommended to their Governing Board to pursue a Memorandum of Understanding (MOU) with the District. An MOU can be developed more quickly than a rule, forge a stronger partnership between the District and APCD, and potentially improve public health through emissions reductions more rapidly than a rule. The APCD Governing Board agreed to the staff recommendation to pursue an MOU with the District and return to the Governing Board no later than September 2024 with a progress report.

Staff from APCD and the District have been discussing Preliminary MOU Measures that would support shared goals captured in the Maritime Clean Air Strategy (MCAS) and the Portside Community Emission Reduction Plan (CERP). The Preliminary MOU Measures currently address:

- Funding for equipment, vehicles, and supportive infrastructure;
- Infrastructure planning and construction at the marine terminals;
- Public participation opportunities for Maritime Industrial projects within the Portside Community area;
- Existing programs to reduce emissions, offset maritime industrial impacts, and support environmental recognition programs;
- Education and outreach as well as new funding opportunities; and
- Assessment of implementation and reporting.

District staff are seeking direction from the Board regarding the Preliminary MOU Measures.

RECOMMENDATION:

Receive the presentation and provide direction to staff, on the potential for a Memorandum of Understanding between the San Diego Unified Port District and the San

Diego County Air Pollution Control District to support further implementation of the MCAS and CERP.

FISCAL IMPACT:

This agenda has no fiscal impact. Future years' funds will be included in their corresponding budget year and are subject to Board approval upon adoption of each year's budget.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A Port that the public understands and trusts.
- A thriving and modern maritime seaport.
- A Port with a healthy and sustainable bay and its environment.
- A Port that is a safe place to visit, work and play.
- A Port with an innovative and motivated workforce.
- A financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

Background

Air pollution control districts and air quality management districts (Air Districts) in California are responsible for regional air quality planning, monitoring, and stationary source and facility permitting. A primary function of Air Districts is to protect public health and attain stringent federal and state standards for air quality. APCD administers these duties in the San Diego Air Basin which represents all of San Diego County. In 2019, California AB 423 (Gloria, 2019) amended state law to restructure and expand the Governing Board of APCD (Attachment A). In addition, AB 423 amended the California Health and Safety Code to add specified duties to APCD, including direction to "Consider adopting an indirect source rule to address pollution from mobile sources that is associated with stationary sources, such as ports, warehouses, and distribution centers." An indirect source is generally defined as any facility that attracts mobile sources of emissions. As ports, warehouses, and distribution centers attract mobile sources which emit pollution including trucks, equipment, and vessels, these facilities are considered indirect sources of pollution.

The California Air Resources Board sets regulations for mobile sources of pollution in the state. It is relatively uncommon for regional Air Districts to enact ISRs which target pollution reduction from mobile sources. However, examples of air districts adopting ISRs do exist. Notably, the South Coast Air Quality Management District (SCAQMD), which is the air district for Orange County and the urban areas of Los Angeles, Riverside, and San Bernadino counties, recently adopted Rule 2305 to reduce pollution associated with warehouses as well as Rule 2306 to reduce pollution from freight rail yards.

Following the directive from AB 423, APCD staff researched potential ISR concepts, met with District staff, numerous stakeholders, and evaluated indirect sources such as ports,

warehouses, and distribution centers located throughout San Diego County. From this research, APCD staff concluded a port-specific ISR would require navigating complex international and federal regulations, be expensive to develop and even more expensive to implement. As an alternative approach, APCD staff recommended to the APCD Governing Board in June of 2023, the pursuit of an MOU with the District in place of a Port-specific ISR. The APCD Board agreed with the June 2023 staff recommendation. However, APCD staff is still considering both regulatory and non-regulatory options for warehouses and distribution centers through San Diego County.

Following the APCD June 2023 Governing Board meeting, staff from APCD and the District developed potential MOU concepts. District staff presented these concepts to the Board of Port Commissioners on December 5, 2023, and APCD staff presented the concepts to their Governing Board on December 14, 2023. The concepts included enhancing and expanding access to incentive funding, actions to support electrification of the District's two cargo marine terminals, continuation and improvement of a zero emission truck pilot program, and prioritized access to funding for the acquisition of zero emission cargo handling equipment and infrastructure. While keeping their comments conceptual to inform negotiations on the MOU, the APCD Governing Board expressed desire to limit pollution from port-related activities, include measurable milestones and annual assessments, develop alternative emission reduction opportunities should the milestones not be achieved, and confer with Portside Community Steering Committee regarding the allocation of incentive funding. Furthermore, the APCD Governing Board directed their staff to return no later than September 2024 with a status update.

Staff from both agencies have been refining the initial MOU concepts into Preliminary MOU Measures, further discussed below.

Preliminary MOU Measures

The MOU would serve as a non-regulatory, collaborative agreement between the District and APCD (the Agencies) to work together to support implementation of the CERP and MCAS . Staff from the Agencies have reached tentative alignment on several Preliminary MOU Measures that will support the MCAS and CERP resulting in air pollution reduction. The MOU would generally include the following areas of focus to reduce air pollution with the details and logistical processes largely worked out, with room for improvement with input from the Agencies Commissioners, stakeholders, and potential implementation partners. The Preliminary MOU Measures currently address:

- Funding for equipment, vehicles, and supportive infrastructure;
- Infrastructure planning and construction at the marine terminals;
- Public participation opportunities for Maritime Industrial projects within the Portside Community area;
- Existing programs to reduce emissions, offset maritime industrial impacts, and support environmental recognition programs;
- Education and outreach as well as new funding opportunities; and
- Assessment of implementation and reporting.

A brief summary of these Preliminary MOU Measures is provided below.

Funding for Equipment, Vehicles, and Supportive Infrastructure

This Preliminary MOU Measure proposes to provide prioritized funding to the District, its maritime tenants, and/or service providers with an initial allocation of \$7M from APCD's Community Air Protection Program. The funding would be focused on acquisition of electric cargo handling equipment and electric heavy-duty trucks. Additionally, the District would support APCD's funding with \$1.08M of its Economic Recovery Program funds for zero emission trucks or infrastructure and a Zero Emission Vehicle Incentive program in new agreements with carriers and/or customers visiting the marine terminals. The Zero Emission Vehicle Incentive program could provide fee reductions for carriers and/or customers conducting trucking operations with zero emission fleets.

Infrastructure Planning and Construction at the Marine Terminals

As part of this Preliminary MOU Measure, the District will continue planning and designing the necessary electrical infrastructure improvements to support electrification at its marine terminals. To date, the District has committed \$40M with \$7.9M allocated in its current FY25 budget. Through this proposed Preliminary MOU Measure, the District would continue its planning efforts and provide updates to APCD. As currently structured, the District and APCD would commit to jointly and/or separately pursue funding opportunities for design, environmental analysis, and construction of plans.

Public Participation with Proposed Maritime Industrial Projects

Building off the recently adopted Article 3 of the Port Code (San Diego Unified Port District Code) that establishes, among other things, the process for Preliminary Project Review, the MOU supports opportunities for the public to become informed and involved in the discretionary review process for Maritime Industrial projects which may occur on District Tidelands within the Portside Community area. Preliminary review by the Board is required when a proposal would require the issuance of a Coastal Development Permit (CDP) and the project would not be exempt from further CEQA analysis (e.g. if the project requires a Mitigated Negative Declaration or Environmental Impact Report). The California Environmental Quality Act (CEQA) has clear prescriptions for public meetings and review/comment periods. This Preliminary MOU Measure would support additional opportunities, early and throughout the discretionary review process leading up to the public hearing during which the Board of Port Commissioners would consider a project for approval. These public participation opportunities have been examined to be sure they would not impair the long-established CEQA process for environmental analysis and engaging the interested public. The potential MOU would formalize these public participation opportunities and provide process certainty for the interested public and possibly result in a more community friendly project than what otherwise may be completed.

Existing Programs to Reduce Emissions, Offset Maritime Industrial Impacts, and Support Environmental Recognition Programs

This Preliminary MOU Measure includes three existing programs which support emission reduction, offset impacts from Maritime Industrial activities, and support environmental programs.

The District's Voluntary Vessel Speed Reduction Program was updated in 2021 to expand the geographic boundary of the vessel speed reduction zone from 20 nautical miles to 40

nautical miles. In addition, the VSR program was updated to increase participation from 80 percent to 90 percent. The program calls for vessel speeds as follows:

- 12 knots for cargo vessels; and
- 15 knots for passenger cruise vessels

Roughly 70 percent of vessels calling to the District's marine terminals voluntarily participate in the program. Through the potential MOU, the District could aim to increase participation to 90 percent by better publicizing the program and developing a rewards and recognition program for those vessels participating.

Secondly, the District's Maritime Industrial Impact Fund (MIIF) offers an opportunity to invest in projects off of District Tidelands within the Portside Community to help implement the CERP. Through the potential MOU the District could contribute an initial \$500,000 from the FY25 budget with an opportunity for more funding in future fiscal years (pending availability). The funding would be disbursed in accordance with the existing BPC Policy 773. To ensure the funding is appropriated, APCD may work with the Portside Community Steering Committee to identify eligible projects and apply to the District for funding.

Lastly, the District would commit to maintaining our Green Marine certification. Green Marine is the leading environmental certification program for North America's maritime industry. It is a voluntary initiative that helps its participants to improve their environmental performance beyond regulations. Green Marine targets key environmental issues related to biodiversity protection air, water and soil quality, and community relations.

Ongoing Collaboration on Education, Outreach, and Funding Opportunities

The potential MOU would support the ongoing collaboration between the District and APCD to provide education and outreach to various stakeholders such as the commercial harbor craft community. Efforts like this help to promote compliance with state regulations and may seek opportunities for funding to transition vessels to cleaner engines and technologies. Collaborative efforts would also involve mutually providing letters of support for funding applications, including support for the San Diego Association of Governments (SANDAG) to finalize the design and begin construction of the Harbor Drive 2.0 project that will revolutionize this critical transportation corridor for goods movement, public transportation and Naval Base San Diego operations.

Assessment of Implementation and Reporting

While every effort has been made to include Preliminary MOU Measures that can be successfully executed, factors beyond the Agencies' control may hinder implementation. If the Preliminary MOU Measures are agreed to via an MOU and do not progress as planned, the Agencies may commit to assessing the challenges and/or barriers to determine what factors are disrupting their implementation. If feasible, additional actions could be taken, such as increasing or identifying supplemental funding, identifying an equivalent, but different, emission reduction project or action(s), or potentially identify additional MIIF eligible projects within the Portside Community. The Agencies would commit to annually present progress on MOU implementation to their respective Boards, the public, and interested stakeholders.

Stakeholder Involvement and Next Steps

The District and APCD staff have met with members of the San Diego Working Waterfront, the Portside Community Steering Committee, and the District's Maritime Forum to obtain feedback on the Preliminary MOU Measures.

Staff from APCD will provide a presentation on the Preliminary MOU Measures to their Governing Board on September 12, 2024. Both agencies will proceed following direction from their respective boards. If there is support to proceed with the Preliminary MOU Measures, staff can memorialize these Preliminary MOU Measures in greater detail and bring a draft MOU to the Board for consideration in Spring 2025.

General Counsel's Comments:

The General Counsel's Office reviewed this agenda as presented to it as to form and legality.

Environmental Review:

This Board item does not constitute an "approval" or a "project" under the definitions set forth in California Environmental Quality Act (CEQA) Guidelines Sections 15352 and 15378 because no direct or indirect changes to the physical environment would occur. CEQA requires that the District adequately assess the environmental impacts of its projects and reasonably foreseeable activities that may result from projects prior to the approval of the same. Any project approval resulting in a physical change to the environment will be analyzed in accordance with CEQA prior to such approval. CEQA review may result in the District, in its sole and absolute discretion, requiring implementation of mitigation measures, adopting an alternative, including without limitation, a "no project alternative" or adopting a Statement of Overriding Consideration, if required. The current Board direction in no way limits the exercise of this discretion. Therefore, no further CEQA review is required.

In addition, this Board item complies with Section 87 of the Port Act, which allows for the establishment, improvement, and conduct of a harbor, and for the construction, reconstruction, repair, maintenance, and operation of wharves, docks, piers, slips, quays, and all other works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient, for the promotion and accommodation of commerce and navigation. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, this update is consistent with the Public Trust Doctrine.

Finally, this Board item does not allow for "development," as defined in Section 30106 of the California Coastal Act, or "new development," pursuant to Section 1.a. of the District's Coastal Development Permit (CDP) Regulations because it will not result in, without limitation, a physical change, change in use or increase the intensity of uses. Therefore, issuance of a Coastal Development Permit or exclusion is not required. However, development within the District requires processing under the District's CDP Regulations.

Future development, as defined in Section 30106 of the Coastal Act, will remain subject to its own independent review pursuant to the District's certified CDP Regulations, PMP, and Chapters 3 and 8 of the Coastal Act. The Board's direction in no way limits the exercise of the District's discretion under the District's CDP Regulations.

Diversity, Equity, and Inclusion Program:

This agenda sheet has no direct DEI impact on District workforce or contract reporting at this time.

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Attachment(s):
Attachment A: California AB 423 (Gloria, 2019)