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**File #:**2023-0284

**DATE:** December 5, 2023

**SUBJECT:**

**PRESENTATION AND DIRECTION TO STAFF REGARDING A POTENTIAL MEMORANDUM OF UNDERSTANDING BETWEEN THE SAN DIEGO UNIFIED PORT DISTRICT AND THE SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT TO SUPPORT IMPLEMENTATION OF THE MARITIME CLEAN AIR STRATEGY AND THE PORTSIDE COMMUNITY EMISSION REDUCTION PLAN**

**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 lieu of a rule, 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 by the end of 2023 with a progress report.

Staff from APCD and the District have been discussing potential concepts that could inform an MOU focused on supporting shared goals captured in the Maritime Clean Air Strategy (MCAS) and the Portside Community Emission Reduction Plan (CERP). While the exact details of the MOU commitments of both parties have yet to be fully developed, staff from both agencies have been able to reach tentative alignment on several potential concepts. Generally, the concepts focus on infrastructure planning, technical assistance, and expanding access to incentive funding to District tenants and operators to convert existing diesel-powered equipment and/or vehicles to zero emission options and to install necessary infrastructure.

Should the Board of Port Commissioners and the APCD Governing Board direct their respective staffs to continue collaboration to pursue an MOU to advance zero emission technologies consistent with the MCAS and CERP, staff will continue regular meetings to progress mutually acceptable MOU terms while periodically meeting with District tenants and stakeholders to receive feedback. An MOU could be brought back to each Board for consideration in 2024.

**RECOMMENDATION:**

Receive a presentation and provide direction to staff regarding a potential Memorandum of

Understanding between the San Diego Unified Port District and the San Diego County Air Pollution Control District to support implementation of the Maritime Clean Air Strategy and the Portside Community Emission Reduction Plan.

**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 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. The San Diego County 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."

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 visiting a facility. However, examples of Air Districts adopting ISRs do exist. Notably, the South Coast Air Quality Management District (SQAMD), which is the air pollution control agency 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. Based on the size of the warehouse and the number and types of mobile sources of pollution involved in cargo handling and freight transportation, the facility is required to mitigate pollution by utilizing zero emission vehicles, equipment, and infrastructure, installing air filters at nearby sensitive receptor locations (such schools or hospitals), and/or pay mitigation fees. The SQAMD rule is being challenged by the California Trucking Association and other parties through ongoing litigation in the United States District court for the Central District of California. SQAMD is also drafting an ISR aimed at reducing pollution from the Ports of Los Angeles and Long Beach.

Following the directive from AB 423, APCD staff researched potential ISR concepts, met with 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, and could result in litigation challenges given that no air district to date has ever regulated indirect sources from port operations. As an alternative, APCD Staff recommended to the APCD Governing Board in June of 2023, the pursuit of a MOU with the District. The recommendation stated:

“Pursuing an MOU with the Port of San Diego would allow each agency to partner on emissions reduction, facilitative, and health protective mitigation measures that can support progress towards achieving cleaner equipment along the Port tidelands. An MOU, if pursued, could also be developed more quickly than a rule, and is considered more suitable for inclusion of facilitative and incentive-based measures that can help to achieve air quality goals. An MOU can also provide more flexibility to allocate incentive funding from the District to such projects and Port tenants that may still be considered surplus to regulation, whereas a rule would significantly limit such funding opportunities.” (Attachment B)

The APCD Governing Board agreed to the staff recommendation to pursue an MOU with the District and return to the Governing Board by the end of 2023 with a progress report.

### **Potential MOU Concepts**

Pursuant to the APCD Governing Board direction, staff from APCD contacted District staff to discuss potential concepts to include in an MOU. Recognizing the shared goals of the agencies that were informed by stakeholder input and captured in the Maritime Clean Air Strategy (MCAS) as well as the Portside Community Emission Reduction Plan (CERP) to decrease pollution from maritime-related activities, an MOU between the District and APCD has the potential to support the transition from diesel powered engines to zero emission technologies.

While the exact details of the MOU commitments of both parties have yet to be fully developed, staff from both agencies have been able to reach tentative alignment on several potential concepts that would support the MCAS and CERP resulting in pollution reduction. The MOU would generally include the following contents that would address the potential concepts further described below:

- Articulation of common goals;
- Schedule for implementation;
- Description of actions for which each agency is responsible;
- Procedures that govern how the MOU will be executed; and a
- Process for proactive coordination and conflict resolution.

### **Acknowledgement of Progress Made to Date**

District and APCD staff are aligned in the importance of acknowledging that several projects and actions are already underway or have been completed to advance zero emission equipment or

activities to improve air quality. These investments and activities would be recognized and accounted for in the MOU as both agencies strive to decrease pollution. Since the MCAS was adopted in October 2021, nearly \$60 million has been spent or committed by the District on zero emission initiatives. For example, the District recently spent \$14 million to procure two all-electric mobile harbor cranes for the Tenth Avenue Marine Terminal (TAMT), replacing the single most polluting piece of diesel equipment at the terminal. APCD contributed an additional \$2.7 million to support the necessary infrastructure at the terminal for the electric mobile harbor cranes. Additional projects include, but are not limited to:

- Investments of shore power infrastructure at the Cruise Ship Terminals and the National City Marine Terminal (NCMT);
- Design and construction of the microgrid project and necessary electrical upgrades at TAMT; and
- Procurement of an emissions capture and control system to reduce pollution from at-berth vessels which are not capable of shore powering.

Likewise, District tenants have acquired electric equipment such as yard tractors, reach stackers, heavy lifts, and an electric tug. These collective efforts are already reducing air pollution and improving air quality, which are important measures to account for within an MOU.

#### Collaboration on Funding and Outreach

District and APCD staff recognize that continued collaboration to seek and develop new incentive opportunities will be necessary to assist with the conversion to lower emitting and zero emission technologies. Through an MOU, both agencies will be positioned to proactively work with District tenants and operators to identify state and federal funding opportunities, which may help to incentivize acquisition of zero emission equipment and the installation of associated infrastructure. In the past, District tenants have tried to access funding opportunities to purchase cleaner technologies, but these programs are often very competitive and can become oversubscribed. As APCD administers state funding aimed at improving air quality, specifically for the Portside Community through the Community Air Protection Program, there is opportunity to design new incentive programs to support and prioritize access to funding for District tenants and operators to enable procurement of zero emission equipment.

Furthermore, District and APCD staff understand that assistance comprehending incentive funding programs, completing incentive applications, and developing capacity regarding cleaner technologies and zero emission equipment would be beneficial. An MOU may provide for technical assistance to decrease barriers to zero emission technology adoption.

#### Infrastructure Planning and Development

Both the District and APCD realize the importance of infrastructure planning to support future electrification of maritime-related assets located at the marine cargo terminals. As a result, through the recommended MOU approach, the District could commit to follow through with infrastructure planning at the TAMT and the NCMT. This effort could include completion of planning and engineering reports to modernize the electrical system at TAMT, which dates back to the 1950s. In addition, further analyses of future phases of shore power located at the NCMT, infrastructure to

charge new electric equipment and vehicles, and the integration of distributed renewable energy resources would also be conducted. The resulting engineering reports can serve as a blueprint for port electrification which the District and APCD could seek funding to construct and implement.

#### Cargo Handling Equipment

The MCAS includes Cargo Handling Equipment (CHE) Objective 1, which aims to reduce emissions from CHE by approximately 90% for nitrogen oxides (NOx), 80% for diesel particulate matter (DPM), and 50% for carbon dioxide equivalent (CO<sub>2</sub>e) relative to a 2019 baseline. Similarly, the CERP includes a strategy to reduce diesel emissions from CHE. To achieve these emission reductions, the MCAS identifies a list of equipment which can be replaced with zero emission technologies. Presently, seven have been replaced. Staff from both agencies are aligned that through the MOU, the District and APCD could collaborate with the owners of the equipment to provide appropriate incentives to replace the remaining pieces of the CHE to fulfill the MCAS objective. In essence, the MOU could ensure funding is available and “prioritized” for District tenants and operators to have a “first right of refusal” for which to apply, with any remaining funds not granted becoming available for the larger San Diego community. The advantage to District tenants and operators is the reduced competition for limited funds and greater flexibility in calculating the level of funding an application may receive, while maintaining transparency in awarding the funds to reduce harmful emissions and improve public health. The MOU would not preclude the owners of CHE from applying for different grant sources or for amounts exceeding any earmarked funds that may be available should an MOU be executed.

#### Heavy-Duty Trucks

Both the MCAS and the CERP include goals to accelerate the conversion of diesel trucks to zero emission alternatives ahead of regulatory schedules. For example, MCAS Truck Objective 1A includes goals to make progress towards 40% zero emission truck visits to the marine cargo terminals in 2026 and 100% zero emission truck visits by the end of 2030. The CERP includes a goal for medium- and heavy-duty trucks servicing the Portside Community to be 100% zero emission five years ahead of the California state requirements. Although the specific California regulatory schedule for trucks to convert to zero emission varies by truck application, drayage trucks visiting seaports are required to be zero emission by 2035. District and APCD staff agree that through the MOU, both agencies could coordinate efforts to develop innovative incentive programs to support adoption of zero emission trucks. Incentives may include, but are not limited to, direct funding to lower the cost of procurement of vehicles and/or infrastructure, reduced tariffs for shippers to utilize zero emission trucks to transport freight to and from the District’s marine cargo terminals, or potential rebates for charging electric trucks at District electric vehicle charging locations. Lastly, the District would agree to continue to collaborate with Caltrans and the San Diego Association of Governments (SANDAG) to progress Harbor Drive 2.0 which will ensure freight efficiency along the critical corridor.

#### Other Potential Concepts

Additionally, there are discussions around other potential MOU concepts still in progress. As conversations between the District and APCD continue, the following concept areas could be explored and included in the MOU to further address emission reductions:

- District-owned and operated fleet vehicles;
- Ocean-going vessels; and/or

- Increased opportunities for public engagement in District projects

### **Stakeholder Outreach and Timeline**

The District and APCD have sought stakeholder feedback on the potential MOU concepts presented herein. The District provided a presentation to the maritime tenants and operators on October 9 and November 20, 2023. Furthermore, both the District and APCD presented the concepts to the Portside Community Steering Committee on October 24, 2023.

Following the District Board meeting on December 5, 2023, the APCD Governing Board will convene on December 14, 2023, to further discuss the potential MOU concepts. Should the Board of Port Commissioners and the APCD Governing Board direct their respective staffs to continue collaboration to pursue an MOU to advance zero emission technologies consistent with the MCAS and CERP, staff will continue regular meetings to progress mutually acceptable MOU terms while periodically meeting with District tenants and stakeholders to receive feedback.

An MOU could be brought back to each Board for consideration in the Summer of 2024.

### **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

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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 Districts 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 Assembly Bill 423

Attachment B: San Diego County Air Pollution Control District June 8, 2023 Agenda Item  
Regarding Options for Indirect Source Rules