



**Santa Barbara County
Air Pollution Control District**

Our Vision  Clean Air

August 26, 2009

Air and Radiation Docket and Information Center
U.S. Environmental Protection Agency
Mailcode 6102T
1200 Pennsylvania Ave., NW
Washington, DC 20460

Docket ID No. EPA-HQ-OAR2007-0121

Subject: Comments on EPA Proposal for Control of Emissions from New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder.

The Santa Barbara County Air Pollution Control District (District) appreciates the opportunity to review and provide comments on EPA's *Proposal for Control of Emissions from New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder (June 26, 2009)*.

This regulation proposes new tiers of Category 3 marine diesel engine standards under EPA's Clean Air Act authority for new marine diesel engines in U.S. flagged or registered vessels. EPA is also proposing fuel sulfur limits under section 211(c) of the Clean Air Act that match the limits that might apply under the Amendments to the MARPOL Annex VI Treaty in Emission Control Areas. Finally, this proposed rulemaking contains regulations to implement several aspects of the MARPOL Annex VI engine and fuel regulations by requiring compliance with Annex VI by all persons subject to the engine and vessel requirements of Annex VI.

We have a compelling interest in this rulemaking for the following reasons:

- Marine shipping is the largest uncontrolled source of NO_x emissions in our county and most coastal areas of the nation. In 2005, these large ocean-going vessels produced over forty percent of all the oxide of nitrogen emissions in Santa Barbara County;
- Marine shipping emissions are growing rapidly and if not effectively controlled, will continue to pose a long-term threat to our ability to meet and maintain health-based standards. Due to increasing cargo volumes through the Santa Barbara Channel, these emissions are projected to make up close to three quarters of the County's NO_x emissions by 2020;
- Failure to reduce emissions from marine shipping will require coastal areas to compensate for these offshore emissions at much greater cost and, if coastal states cannot fully compensate for such emissions, this may cause districts such as Santa Barbara to fall back into nonattainment for the federal ozone standard.
- Ninety percent of the annual entrances to U.S. ports in 1999 were made by foreign flagged vessels and over 92 percent of the NO_x emissions from transits through the Santa Barbara channel in 2005 were made by foreign flagged vessels.

After enduring years of delay and inaction by previous administrations, we are encouraged by EPA's proposed coordinated strategy for ocean-going vessels. While we generally support EPA's proposed standards, we believe that EPA is required under Section 213 of the Clean Air Act to consider both stricter standards and shorter implementation timelines. In addition, we recommend several principles that should be considered as part of this regulatory action.

EPA is impermissibly deferring to the emissions standards adopted as part of the Amendments to the Annex VI Treaty.

Section 213 of the Clean Air Act requires EPA to adopt a rule to "achieve greatest of emissions reduction achievable through application of technology that [EPA] determines to be available" while giving due consideration to such issues as cost, noise, and safety. Prior to the adoption of the Amendments to the Annex VI Treaty, EPA repeatedly stated it would not defer its adoption of standards under Section 213 for Category 3 marine vessel engines to "negotiated international standards." In light of these representations, the Court of Appeal in *South Coast AQMD, Santa Barbara APCD et. al., v. EPA* (2008) 554 F.3d 1076, stated when it upheld EPA's 2007 Extension Rule:

In promulgating the Extension Rule, . . . EPA expressly represented that, although it does expect the international standard-setting process will generate relevant information that it should consider, it is 'not deferring to that process.' 72 Fed.Reg. at 68,522/2. The petitioners give us no reason to doubt EPA's good faith in making this representation; . . ." (*Ibid.* at p. 1081.)

Regarding foreign flagged vessels, the Court of Appeal stated in the same opinion that the "Extension Rule reaffirms the EPA's commitment to decide this issue when it issues Tier 2 standards." (*Ibid.*)

Yet, now, in the proposed rule, EPA has proposed to adopt verbatim the Amendments to the Annex VI standards and to again defer any decision on whether EPA has authority to regulate foreign flagged vessels. EPA has indicated it might revisit the foreign flagged vessel issue if an ECA is not approved by other MARPOL nations pursuant to the provisions of the Amendments to the Annex VI Treaty.

The District is concerned that EPA is bypassing the opportunity to push control technology development and implementation forward by adopting more stringent technology forcing emission control standards. Since many of these technologies are already shown to be feasible and in practice in both on-road and non-road engines, the compliance period EPA proposes for the new standards should be shortened to facilitate transferring the technologies to Category 3 marine engines in a timely fashion. But instead of proposing such technology forcing standards, EPA has simply proposed to adopt the negotiated standards of the Amendments to the Annex VI Treaty and to defer again any determination of whether it will regulate foreign flagged vessels.

Therefore, the District is concerned that EPA is proposing Tier II standards that simply represent nothing more than the outcome of a negotiation process and do not meet EPA's duty to independently justify and adopt standards under Section 213 for all Category 3 marine vessel engines.

Reliance on IMO's designation of U.S coasts as ECAs as the means by which MARPOL Annex VI Tier III NO_x would become effective for all flagged vessels.

EPA states, that “[i]f this amendment is not adopted in a timely manner by IMO, we intend to take supplemental action to control emissions from vessels that affect U.S. air quality”. As a “backstop” to potential delay in IMO action, we urge EPA to commence a parallel rulemaking action which would subject all flagged vessels to the proposed Category 3 standards. This approach would eliminate the additional time for another rule making process should the IMO not act in a timely fashion. Data that EPA has relied on in the past indicates that 90 percent of the vessels entering U.S. Ports are foreign flagged, and data collected for vessels transiting the Santa Barbara channel in 2005 found that over 92 percent of the NO_x emissions are from foreign flagged vessels. See Santa Barbara County Marine Shipping Emissions Inventory -- 2005. This means that foreign flagged vessels have a significant impact on the air quality of Santa Barbara County. Additionally, limiting the proposed standards to American flagged vessels provides an unwanted incentive for owners of American flagged vessels to change their country of registration.

The District also has a fundamental objection to EPA's approach on foreign flagged marine vessels. Under Section 213, EPA has a nondiscretionary duty to regulate all nonroad engines subject to EPA's 1994 significance finding, including marine vessels. See 59 Fed. Reg. at 31307. Indeed, the *Nonroad Engine and Vehicle Emission Study- Report* (1991) specifically includes “Commercial Marine Vessels.” *Id.* at 4, available at www.epa.gov/otaq/regs/nonroad/nrstudy.pdf. Nowhere has EPA identified evidence that suggests that when the Study was completed or the 1994 finding was made that foreign flagged vessels were excluded. Therefore, EPA has a mandatory duty to regulate all nonroad engines subject to its determination of significance, including all foreign flagged marine vessels operating in U.S. territorial waters.

Foreign flagged marine vessels represent the overwhelming majority of the air pollution problem from Category 3 vessels. EPA acknowledged in the Advanced Notice of Proposed Rulemaking that in 1999, “according to U.S. Maritime Administration data, about 90 percent of annual entrances to U.S. ports were made by foreign-flagged vessels (75,700 total entrances; 67,500 entrances by foreign vessels; entrances are for vessels engaged in foreign trade and do not include Jones Act vessels).” 72 Fed. Reg. at 69536. Additionally, “MARAD data from 2005 indicates that while about 4.7 percent of all ocean-going vessels are owned by citizens of the United States (5th largest fleet) only about 1.9 percent of all ocean-going vessels are flagged here. According to that data, while Greece, Japan, China and Germany account for the largest fleets in terms of ownership (15.3, 13.0, 11, and 8.9, respectively), Panama and Liberia account for the largest fleets by flag (21.6 and 9.8, respectively).” *Id.*

In the past, EPA has declined to even indicate if it believes it has authority to regulate foreign flagged vessels. Under Section 213, EPA has made a finding of significance that emissions from marine vessels – including foreign flagged vessels – substantially contribute to the air pollution in areas of the country that do not meet federal air quality standards. In light of this finding, EPA has a mandate to adopt regulations for all nonroad engines, including foreign flagged marine vessels. It has been 10 years since EPA was first sued for its failure to regulate Category 3 marine vessels and 6 years since EPA promulgated the 2003 Extension Rule which set the

interim Tier 1 standards. And yet, EPA still has not determined if it has jurisdiction over 90 percent of the ocean-going vessels entering U.S. ports.

Congress clearly had the authority to require in Section 213 of the Clean Air Act that EPA adopt emission control standards that apply to foreign flagged vessels operating in the United States territorial waters. Indeed, Congress has adopted many other statutes that apply to foreign flagged vessels, including the Oil Pollution Act of 1990, 46 U.S.C. § 3703 (requiring vessels carrying oil to be double hulled when operating in U.S. waters); the Deepwater Port Act of 1974, 33 U.S.C. § 1518 (prohibiting foreign flagged vessels from using U.S. deepwater ports if the nation objected to the application of U.S. jurisdiction to all vessels in such ports); the Ports and Waterways Safety Act of 1972, 33 U.S.C. § 1228, (prohibits any vessel that fails to comply with U.S. ship regulations from operating in the U.S. territorial seas or internal waters; and see 16 U.S.C. § 1, regarding “protection of national [park] resources” which was the statutory basis for the emissions standards adopted for Glacier Bay National Park in 71 Fed. Reg. 69328 (Jan. 2, 2007).

EPA’s deferral on the regulation of foreign flagged vessels pending further actions by MARPOL on the establishment of an ECA is improper. EPA has the legal authority to regulate these vessels and under Section 213 of the Clean Air Act, EPA has a duty to do so. EPA may not rely on ongoing negotiations regarding further possible amendments to the Annex VI Treaty as a basis to defer regulation under Section 213. This is directly contrary to the representations that EPA made to and which the Court of Appeal relied on in *South Coast AQMD, Santa Barbara APCD et al v. EPA, supra*. Additionally, the Supreme Court had held that EPA’s “reasons for action or inaction must conform to the authorizing statute.” (See *Massachusetts v. EPA* 127 S.Ct. 1438, 1463 (2007), EPA’s concern that “regulating greenhouse gases might impair the President’s ability to negotiate with ‘key developing nations’ to reduce emissions” was not a valid basis for delaying regulation under the Clean Air Act.)

Therefore, EPA may not defer regulating foreign flagged marine vessels pending the outcome of negotiations with other nations to establish an ECA. EPA should determine that it has jurisdiction to regulate foreign flagged vessels and EPA should proceed to adopt effective emissions standards under Section 213 that control the air pollution from these sources.

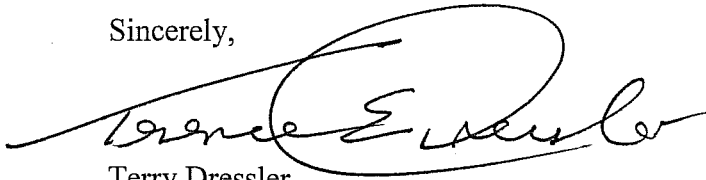
Proposed Standards are applicable only to new Category 3 marine compression-ignition engines.

We ask that EPA explore a variety of regulatory and incentive-based approaches to reduce emissions from the existing fleet (both US and foreign flagged). Fleet turnover for vessels that use Category 3 engines is very slow. In addition, our local data show that a significant number of the ships that traverse our coastline on a regular basis were built in 1990 or later, which means that they will continue to emit at current levels well into the future. See Santa Barbara County Marine Shipping Emissions Inventory -- 2005. Achieving reductions from this existing fleet is very important to us in attaining and maintaining our health-based clean air standards, and we would like to work closely with EPA and other stakeholders to evaluate potential regulatory and incentive based approaches to clean up the existing fleet. We also encourage EPA to join with other agencies to provide funding for programs to demonstrate retrofit technologies. California’s Carl Moyer Program has been very successful in reducing emissions from vehicles, marine vessels, and stationary engines while creating productive partnerships with engine operators. This approach should be evaluated for its applicability to ocean-going vessels.

Another incentive approach that we believe holds promise is differential port fees. If port fees were reduced for low-emitting vessels and increased for high-emitting vessels (while keeping overall port revenue neutral), a potentially important incentive could be created for ship operators to purchase ships with clean engines and to consider retrofit of existing, high-polluting ships. We understand that the approach has been used successfully in Scandinavia.

We appreciate the opportunity to comment on this proposed rulemaking and look forward to working closely with EPA in developing regulations and incentives to help reduce emissions from this significant source. If you have any questions or comments, please contact Dr. Ron Tan (805-961-8812) of my staff.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry Dressler", with a large, stylized loop at the end.

Terry Dressler
Air Pollution Control Officer
Santa Barbara County Air Pollution Control District

Attachments