

AQMD Enstrom Comments Re MATES III 082508 ~~Draft~~—not submitted, but read at meeting

~~August 25~~June 17, 2008

SC AQMD

~~Diamond Bar, CA~~Senator Don Perata

~~Senate President Pro Tem~~

~~Chair, Senate Rules Committee~~

~~State Capitol, Room 205~~

~~Sacramento, CA 95814~~

Re: ~~Comments Re MATES III~~Petition Challenging August 27, 1998 CARB Declaration Regarding Diesel Particulate Matter

Dear ~~Dr. Ospital~~Senator Perata:

As four accomplished and knowledgeable faculty members at the University of California and Stanford University, and in accord with the provisions of Section 39662 (e) of the California Health and Safety Code, we herewith petition the California Air Resources Board (CARB) to review its August 27, 1998 decision declaring the particulate matter (PM) component of diesel exhaust to be a toxic air contaminant (TAC). We have specific additional scientific evidence regarding the health effects of diesel PM which was not available as to 1998, as well as other evidence about CARB procedures used to make the 1998 decision, which we believe justifies a revised determination.

During the decade since diesel PM was declared to be a TAC, CARB has developed regulations to reduce diesel emissions that are extraordinarily expensive (estimated to range up to \$10 billion or more), but we believe that these regulations are not scientifically justified and that they are negatively impacting the California economy. Thus, we request that you ask Mary Nichols and John Balmes, M.D., to agree to fully evaluate our petition before the full Senate confirms their appointments to CARB. Specifically, Nichols and Balmes should agree to address the scientific and administrative concerns raised in the April 22, 2008 public comments submitted to CARB by James E. Enstrom, Ph.D., in the June 4, 2008 testimony before the Senate Rules Committee by James E. Enstrom, Ph.D., and in additional evidence to be submitted by all of us once CARB agrees to review it.

The most important aspects of our petition are as follows: Unit risk factor for diesel particulate matter is statistically consistent with no increase risk for lung cancer, if all available California specific epidemiologic evidence is used.

1) SRP not legally constituted according to CHSC Section: 3 year term and appointment from pool of at least three candidates from UC President . Prominent UCLA Law Professor supports notion of three years terms, although Mary Nichols contend that Govt Code 1302 allows appointments to continue indefinitely.

- 2) Determination in 1998 by SRP was not based on recent California specific evidence, which is basis for current challenge to 1998 declaration.
- 3) No accounting for the “healthy worker effect”: even if there is some lung cancer risk associate with diesel particulate matter, the cohorts that exhibit this excess risk have fewer deaths from all cancer and all causes than would be expected based on the death rates in the general California population. For instance evidence indicates that truckers in California are substantially healthier that the average US or CA populatin.
- 4) Although SRP decision was made based primarily on epidemiologic evidence, the March 11, 1998 and April 22, 1998, the SRP TAC declaration is primarily the result of discussions between Froines (toxicologist), who spoke for 42% of the time during these two meetings, and Glantz (biostatistician), who spoke for 22% of the time. Friedman (epidemiologist), who is most familiar the epidemiologic evidence, spoke for only 2.5% of the time. Friedman never addressed the issues of the “healthy worker effect,” the California specific evidence, and the concerns raised by Garshick about the limitations of his occupations studies for making regulatory decisions.
- 5) Apodaca v. CARB decision in favor of CARB was based challenging validity of unit risk factor and this challenge was rejected by Judge Jones. This challenge is based primarily on the facts that SRP was not legally constituted as of April 22, 2008.
- 6) Because MATES III is being used to control diesel emissions in South Coast (page xxx) and because of the uncertainties

- 1) The CARB “Goods Movement Emission Reduction Plan” (GMERP) is being largely justified by an exaggerated estimate of premature deaths in California due to diesel PM that has grown from 750 deaths as of December 2005 to 3,900 deaths as of May 22, 2008. This large and sudden increase in premature deaths indicates the uncertainty in these numbers, as well as their implausibility, considering that current PM levels in California are at a record low.
- 2) CARB’s health effects justification for GMERP has omitted epidemiologic results indicating that the relationship between PM and mortality is extremely weak in California. These results include a U.S. map from the 2000 Health Effects Institute Reanalysis Report that shows no excess mortality risk in California associated with PM and a major 2005 study by James E. Enstrom, Ph.D., that found no current relationship between PM and mortality in California.
- 3) CARB has ignored major publications that provide a detailed scientific basis for a weak relationship between diesel PM and mortality. These include a massive 2002 “Health Assessment Document for Diesel Engine Exhaust” by the U.S. Environmental Protection Agency, a 2002 book “The Particulate Air Pollution Controversy” by Robert F. Phalen, Ph.D., and a 2008 book “Air Quality in America” by Joel M. Schwartz and Steven F. Hayward.
- 4) CARB has seriously underestimated the economic costs associated with regulating diesel PM and has failed to appreciate the fact that no state other than California has a plan equivalent to

the GMERP. CARB needs to address the economic and scientific issues raised in the May 27, 2008 Washington Times Commentary “Diesel risks mostly hot air?” by Henry I. Miller, M.D.

- 5) CARB needs to indicate that it will fully evaluate our petition to review the classification of diesel PM as a TAC before it spends \$1 billion of Proposition 1B funds on the GMERP.
- 6) CARB has allowed members of the Scientific Review Panel on Toxic Air Contaminants (SRP) to serve for far longer than the three year term specified in California Health and Safety Code Section 39670 (b). Also, CARB has not regularly asked the UC President to nominate at least three candidates for each SRP position in accord with the Code Section 39670 (b) (4). Consequently, many highly qualified California scientists have never been considered for appointment on the SRP and have never been able to provide their diverse expertise on TACs.
- 7) Since the April 22, 1998 SRP decision declaring diesel exhaust to be a TAC has been highly controversial and since there is evidence that the SRP has not been appointed in strict accord with the provisions of the California Health and Safety Code, CARB must review this decision.

Additional details are available to support all of the aspects of our petition. Thank you very much for your consideration regarding this important issue, which ultimately impacts all Californians.

Sincerely yours,

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