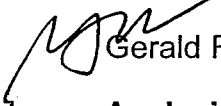




**Date:** February 14, 2006  
**To:** Mayor and Members of the City Council  
**From:**  Gerald R. Miller, City Manager  
**Subject:** **Analysis of AB 1101 (Oropeza): Diesel Magnet Sources**

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**Executive Summary**

Assemblymember Jenny Oropeza introduced AB 1101 on February 22, 2005. The bill adds sections to the Health and Safety Code, to define "Diesel Magnet Sources," and requires air districts to develop diesel reduction measures and plans to reduce emissions from designated sources. This memo provides an analysis of the bill, and recommends that the City continue to maintain an official position of "watch" on this bill, as many issues are still unresolved and changes to the bill are expected in the Senate.

**History**

AB 1101 became a two-year bill last year as it failed to make it out of the Assembly by the prescribed deadlines. The bill was heard and approved by the Assembly Transportation Committee on April 25, 2005 and was heard and approved by the Assembly Appropriations Committee on May 25, 2005. On June 2, 2005, the bill went to the Assembly floor, but did not get enough votes to pass (31 Ayes - 33 Noes). On January 9, 2006, the Assembly agreed to significant amendments that excluded truck distribution centers from the bill. AB 1101 went to the Assembly floor for passage on January 30, and failed on a vote of 33 to 36. The next day, the Assemblymember brought the bill back again, and made a commitment to work on some of the Assembly's concerns regarding jurisdictional issues while the bill is in the Senate. The bill then passed 43 to 32 and has been jointly referred to the Senate Transportation and Housing Committee and the Senate Environmental Quality Committee.

**Summary of the Bill**

The bill proposes several key changes to current law:

1. It would create a new category of "diesel magnet source." These sources are defined as a facility that, by nature of its operation, attracts diesel engines in large numbers, and includes only the following:
  - A port that moves more than 1.5 million metric tons of dry cargo a year,
  - An airport through which more than two million passengers travel a year,
  - A rail yard where locomotive engines operate at least 10,000 hours per year (including movement and idling).

2. AB 1101 would subject the facilities with the greatest potential impact on public health to the requirements of toxic “hot spot” statutes. The California Air Resources Board (CARB) would develop this list on a statewide basis, and it must include five ports, ten airports, and twenty-five rail yards.
3. New “hot spot” designees would have one year to prepare and submit an emissions inventory plan to the appropriate air district. In the case of Long Beach, the City would submit to the South Coast Air Quality Management District (SCAQMD).
4. The emissions inventory plan for these diesel magnet sources would include:
  - Methods for quantifying air releases of diesel particulate exhaust that occur within the boundaries of the facility.
  - Methods for characterizing, for the public, potential impacts of releases that occur outside of the boundaries of the facility, but in the same general location and associated with mobile source trips to and from the facility.
5. The bill creates a new definition of “Diesel Magnet Source Risk Reduction Measure” (DMSRRM). Under this definition, these measures include changes to equipment or methods of operation that reduce or eliminate toxic air releases. These measures can include:
  - a. Modification of operational standards or practices.
  - b. Application of emissions control technology.
  - c. System enclosure and emissions control, capture, or conversion.
  - d. Use of alternative fuels or fuel additives.
  - e. Replacement, retrofit, or repowering of engines.
  - f. Electrification of diesel-fueled internal combustion engines.
6. Existing law requires that if the air district has determined that there is a significant risk associated with the emissions from a facility, then the facility operator must develop a plan to implement measures that will result in a reduction of emissions to a level below the significant risk level within five years. AB 1101 would allow the air district to lengthen the period in increments of five years if the following conditions are met:
  - a. The facility prepares and implements a district-approved plan to make real and measurable progress in reducing risks using all technical and economically feasible mitigation measures.
  - b. The facility convenes a district-approved advisory group that includes at least two members of the affected residential community, two members of the affected business community, and one representative from each district, the state board, and the city or county in which the facility is located. The facility must review its risk reduction implementation progress with the advisory group, in a public meeting, at least once each year until the risk has been reduced to below the significance thresholds.

7. All costs incurred by CARB, the Office of Environmental Health Hazard Assessment, and the air districts as a result of the bill are to be recovered through fees imposed on the regulated entities, such as the Long Beach Airport and the Port of Long Beach.
8. No reimbursement would be provided to local agencies, as the bill states that local agencies have the current authority to levy service charges, fees, or assessments to pay for the costs mandated by AB 1101.

### **Potential Impacts to the Long Beach Airport**

Currently, only stationary facilities, such as large petroleum refineries, gas stations and dry cleaners, have been required to prepare inventories of their air emissions and submit the data to the local air district. AB 1101 would further define the air districts' ability to regulate mobile sources of diesel emission and add these sources to the reporting and mitigation requirements.

To date, Long Beach Airport has not been required to submit such reports. AB 1101 would create new requirements based solely upon the number of annual passengers, and not on any factual data identifying Long Beach Airport as a significant contributor of diesel emissions.

The Airport's concerns include:

1. It would be difficult, if not impossible, to accurately isolate Airport specific diesel emissions from our surrounding environment, such as freeways, ports, and refineries.
2. The Long Beach Airport is not a significant producer of diesel emissions, and is the smallest of the 10 largest airports that would be covered under this bill.
3. The Airport does not own or directly control the movements of mobile diesel sources that operate on or around the Airport. The City can only enact changes in tenant behavior through negotiating terms within a lease, or through enactment of local laws/regulations, which generally must be met as a condition of existing leases. However, this opportunity is not always available on a timely basis because of the terms and provisions of various leases.
4. Diesel emission sources at the Airport are isolated to trucks that supply fuel to aircraft and some ground service units. Steps are already underway to electrify most of the ground service equipment.
5. The City is already a co-signator to an MOU between CARB, SCAQMD, and the airlines, to convert all of their ground service equipment to meet applicable standards by 2010, with benchmark progress required by 2007.

### **Organizations that Support and Oppose AB 1101**

AB 1101 is supported by the sponsoring organization, The Air Pollution Control Officers, and is also supported by air quality districts and statewide environmental groups, according to the author's office. The main opposition comes from the State

Chamber of Commerce, the California Trade Coalition, the California Railroad Association, and the California Airport Association.

Registered supporters of the bill include:

California Air Pollution Control Officers Association (sponsor), American Lung Association, Bay Area Air Quality Management District, California Teamsters Public Affairs Council, Northern Sonoma County Air Pollution Control District, Sacramento Air Quality Management District, San Luis Obispo County Air Pollution Control District, South Coast Air Quality Management District, Clean Power Campaign (support if amended), Coalition for a Safe Environment (support if amended), Natural Resources Defense Council (support if amended)

Registered groups that oppose the bill include:

APM Terminals, California Chamber of Commerce, California Railroad Association, California Trade Coalition, The Thursday Group, California Airport Association

Initially, the California Trucking Association and the Western States Petroleum Association opposed the bill; however, the author accepted amendments in January 2006 deleting the inclusion of distribution centers and, in response, those two organizations removed their opposition to the bill. CARB has not adopted an official position, but has indicated that they would like to see substantial amendments to the bill as it moves forward. The South Coast Air Quality Management District is an active proponent of the bill.

According to Committee staff, no local government entities have taken a position for or against the bill. The City of Long Beach's current position is "watch." The Port of Long Beach also has an official position of "watch."

**Arguments for and Against**

Supporters and the author have argued that:

1. Recent studies show that particulate emissions in diesel exhaust are highly toxic, and account for upwards of 70 percent of the statewide cancer risk due to toxic pollutants in ambient air.
2. Existing law requires facilities, whose operations result in emission of toxic air contaminants, to prepare inventories of those emissions and submit them to the local air districts for prioritization.
3. Available data indicate that diesel magnet sources may pose risks to the surrounding communities that are far greater than risks posed by most traditional stationary sources, and that far greater numbers of people are affected by the emissions. Diesel magnet sources meet the statutory definition of "facility" under existing law, but to date have not submitted inventories or taken other actions in compliance with existing statutes.
4. Local air pollution control districts and air quality management districts should review policies and procedures that implement existing law and, if necessary, revise them to appropriately address large diesel magnet sources.

Opponents have argued that:

1. This proposal shifts regulatory authority over the sources mentioned above from a statewide agency, the California Air Resources Board (CARB), to local air districts. Each air district board would create varying risk thresholds and requirements, which could result in potentially conflicting requirements. There would be no uniformity throughout the state for similar emission sources.
2. In order to prevent a patchwork of regulations, the state should continue to be the main regulatory agency over ports, rail yards and airports so there is consistent regulation over the sources that facilitate interstate commerce and business throughout the state. The control of mobile sources is handled most effectively under state and federal control to avoid creating islands of conflicting regulations.
3. Fees imposed on regulated entities to recover costs incurred by CARB, the Office of Environmental Health Hazard Assessment, and the air districts could become very costly.
4. This bill would require facilities vital to the state's economy, such as ports, rail yards, and airports, to mitigate emissions over which they have limited control.

#### **Relationship to CARB MOU**

In a hearing on January 27, 2006 the CARB board upheld the controversial Memorandum of Understanding (MOU) with the railroads. The MOU was developed between CARB and the major railroads without public input, and included a provision stating that if any other entity enacted State legislation to regulate the railroads, that the railroads could opt out of similar provisions in the MOU. The City of Long Beach is officially opposed to this MOU, and Councilmember Tonia Reyes Uranga recently reiterated the City's opposition at that hearing.

It is currently unclear how the passage of AB 1101 would affect the CARB MOU. The railroads are one of the opponents of the bill, as they believe it will lead to conflicting regulations as trains move between different air districts. According to Committee staff, the railroads have not brought up the CARB MOU in the hearings. However, the text of the MOU allows the railroads to be released from their obligations at their discretion if an agency attempts to enforce any requirement addressing the goals in the MOU. In order for this to occur, they must meet and confer with CARB and provide 30 days notice. It is not known what the impact on air quality would be if the railroads backed out of their MOU with CARB.

#### **Assembly Hearing**

On January 31, 2006, the full Assembly heard AB 1101. The bill had failed passage the day before, and January 31 was the deadline for the bill to pass out of the Assembly. In response to concerns about the jurisdictional issues, the Assemblymember agreed to take amendments as the bill moved over into the Senate. Specifically, she said:

*“As you may recall from yesterday, there was some discussion about a potential split of jurisdiction between state and regional agencies. Although this bill will be implemented at the regional level, I will be taking amendments in the Senate to clarify, and I will also be working with some of the impacted entities and businesses who are affected by this legislation to further facilitate the workability of the legislature to assure there are not expectations that are unreasonable or operationally unworkable.”*

The bill passed 43 to 32, with both Assemblymembers Karnette and Dymally voting in the affirmative. The bill will now go to the Senate, where it is expected to face some strong opposition. There is also the potential that the Governor may veto the bill in its current form.

### **Recommendation**

It is recommended that the City continue to watch this bill. There are still many outstanding issues that will be worked on in the Senate, such as the jurisdictional issues between the air districts and CARB, the potential for conflicting regulations between different air districts, the ability of local facilities to mitigate emissions that they may not be able to control, the costs that will be borne by local governments, and the effect this may have on the CARB Railroad MOU. Since the Assemblymember has committed to making amendments to help clarify some of these issues, it would be helpful to see the revised language before the City changes its official position.

If you have questions or require additional information, please contact Tom Modica, Manager of Government Affairs, at 8-5091.

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