All I Wanted for Christmas Was a Coherent Regulatory Policy

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Whether it's high-speed rail to nowhere, 1990 standards for electric vehicle passenger cars that are more than two decades delayed, or the most recent effort to transform the heavy-duty sector, California leadership continues to be more focused on setting goals rather than implementing programs and calling that leadership.

In order to avoid cries of heresy if the obvious isn't stated, I'll state the obvious. There is no doubt that transformation to a zero-carbon future is necessary. Again, the question is whether we are actually on that path and if we will get there with the least amount of harm. One of the single biggest challenges for this transition is whether California will be ready when it dictates that industry must be ready.

One strange example of this is SB 671. The goal of SB 671 is laudable: through a stakeholder process identify five priority freight routes and begin infrastructure planning to support the transition to zero-emissions. This is critically important. In years past, when the transition to a zero-emissions future was more tentative and primarily market driven, there was much talk of the chicken and egg problem. Would new technology vehicles come first or would charging/fueling infrastructure come first? Now that the transition is no longer market driven but regulatorily driven, there can be no doubt; infrastructure must come first. The infrastructure must be ready when the regulations dictate that zero-emission equipment must be deployed. Otherwise, as one industry colleague says, the new equipment, like cargo-handling equipment and trucks, will be so much "yard art".

Strangely, the planning report – not the actual the infrastructure – is due December 1, 2023. That would be 30 days after the first zero emission requirements go into effect for port drayage. In this case, the agency responsible for implementing SB 671, the California Transportation Commission, is simply implementing the will of the Legislature. That agency did not set the schedule in SB 671, nor did it set the timing of new zero-emission regulations (that would be the California Air Resources Board). But that speaks to an enormous disconnect between what the Legislature thinks the rollout of zero-emissions technology will look like and what the actual proposals from regulators are. Is it any surprise that some fear that zero-emission equipment, at a cost north of $300,000, may be left as art to be gazed upon rather than moving cargo?

In a different example, the California Air Resources Board (CARB) recently adopted the Heavy-Duty Inspection and Maintenance regulation (HD I/M). The program is essentially smog check for trucks. The twist in this case was that facilities that trucks visit would be responsible for checking the smog check status of every truck that enters the facility. Imagine if your local supermarket demanded to see your smog check before you could purchase groceries!

In any case, over the course of rule development, port stakeholders had one simple request of CARB: connect the HD I/M database with the State Drayage Truck Registry in order for trucks to be checked with the same data systems that are used to implement the Clean Trucks Program and CARB's Drayage Truck Rule. Without the two databases connected, terminal operators may have to individually check each truck manually – an impossible task for the 36,000+ daily inbound trips for San Pedro Bay alone. Over the course of months, CARB repeatedly stated that the request was reasonable, but would

explicitly exclude committing to such an effort. During the adoption of the rule, CARB staff did state their goal was to make the regulation integrate into the existing systems as seamlessly as possible. While not a commitment, it may be better than nothing. Then again, in the land of Silicon Valley and Silicon Beach, one would be forgiven for thinking that the State should be able to guarantee that the most basic information technology component would be designed into such a transformational rule. But transformation is for the regulated, not the regulator.

In another strange twist no one knows when this rule will go into effect. CARB does not know. Truck owners do not know. Facility operators do not know. All that is known is that it will not be sooner July 1, 2023, and regulated parties will have 90 days warning. In essence, the agency that is solely responsible for designing the rule cannot be certain when it will have a properly working program, but the companies and individuals waiting from word on high must be capable of pivoting with a 90 days' notice to the new rule under risk of penalty. There is something absurd about an agency shirking their own responsibility for providing regulatory certainty – particularly where they control their own destiny – but appear unsympathetic to how regulated parties need to respond to enormous uncertainty.

Individually, these two examples are arguably small matters. Unfortunately, they are indicative of how policy is being developed in California. Stating the goal is now more important than implementing the goal – implementation is someone else's problem. The only concern is completing the jigsaw puzzle that is California's future. The pieces of that future are seen as fixed and unchanging objects that can be gathered and arranged, rather than being both dynamic and constrained elements that make up our economy and lives. Diktat can surely make the puzzle piece fit.