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Health and Environment Program
Natural Resources Defense Council
111 Sutter St, 20th Floor
San Francisco, CA, 94104

Via Email and U.S. Mail

July 14, 2008

Ms. Anne Whittington
Port of Oakland
530 Water St.
Oakland CA 94607

Re: Comments on the Port of Oakland Maritime Air Quality Improvement Plan

Dear Ms. Whittington,

On behalf of the undersigned groups, we write to comment on the Port of Oakland Maritime Air Quality Improvement Plan (MAQIP or the Plan). We are pleased that the Port of Oakland together with the Bay Area Air Quality Management District (BAAQMD) and other stakeholders has progressed on a plan to address port pollution; however, we are gravely disappointed with the lack of specificity and commitment in the MAQIP.

Considerable efforts over the years by environmental, public health, and community organizations, in addition to recent efforts by the California Air Resources Board (CARB), South Coast Air Quality Management District (SCAQMD), and the Ports of Los Angeles and Long Beach, have all demonstrated the necessity and timeliness of the port air quality improvement plan. In April 2006 as part of the Governor's Goods Movement Action Plan, CARB estimated that pollution from California ports and goods movement activities causes 2,400 premature deaths and over 1 million school absences every year, costing the state approximately \$200 billion by 2020.¹ With growing evidence of greater health impacts from air pollution, CARB recently updated those estimates, noting that diesel-powered freight transport in California each year causes over 3,700 premature deaths and many thousands of hospital admissions, missed workdays and missed days of school.²

It is abundantly clear that a strong air quality plan is needed to protect public health and the environment, especially given the fact that the Port of Oakland container throughput has grown by more than fifty percent over the past ten years.³ While much attention has been focused on

¹ CARB Goods Movement Emission Reduction Plan at 2, April 2006. (hereinafter "CARB ERP").

² www.arb.ca.gov/Research/Health/pm-mort/pm-mortdraft.pdf

³ http://www.portofoakland.com/maritime/facts_cargo.asp

the Ports of Los Angeles and Long Beach, these ports already adopted a far reaching Clean Air Action Plan in November 2006. The recent health risk assessment (HRA) done by CARB for West Oakland indicates a new urgency that air pollution from the Port of Oakland must be addressed. This assessment showed elevated cancer risks of 190 per million directly from Port of Oakland operations and countless other health impacts including hundreds of asthma and respiratory illnesses.⁴ This is just the tip of the iceberg in terms of health impacts from Port of Oakland pollution, since this assessment only looked at impacts of diesel PM, excluding other pollutants such as nitrogen oxides and other air toxics. Additionally, we believe pollution from trucks serving the Port of Oakland was misallocated, vastly under-estimating impacts from the Port.

Given the pressing health concerns from Port of Oakland operations, the significant increases in container traffic slated for the coming decade, and the fact that measures to reduce Port pollution are readily available, we urge the Port to commit to discrete, measurable actions to reduce air pollution from its operations in addition to those actions occurring outside of the Port's control. This Plan must be strengthened to achieve maximum pollution reductions, with the ultimate objective of preventing all negative health impacts from Port of Oakland activities. As one of the largest ports in the nation, the Port of Oakland must take responsibility for the impacts of its operations on nearby communities and accelerate mitigation of air pollution to the maximum extent feasible. Our recommendations for improving the Plan are laid out below with more detailed comments to follow separately.

Recommendations

- I. ***Health Protective Goals:*** In order to ensure adequate health protections in surrounding communities, provide reductions in criteria pollutants, and prevent an over-reliance on HRAs to gauge air quality and public health, the Plan's goals must include clear, measurable targets to reduce health risk from toxic air contaminants and criteria pollutants. These goals must be at least as ambitious as those articulated by CARB, and should include: (1) reducing the health risk from diesel PM by 70%, as compared to 2000 levels by 2010; (2) reducing the health risk from diesel PM by 85%, as compared to 2005 levels by 2020; (3) reducing NOx emissions by at least 30% by 2015; and (4) further reducing NOx emissions by 50% by 2020.

While the second health risk reduction goal was already adopted by the Port Board of Commissioners in a March 2008 policy statement, we see no evidence of support for the remaining goals outlined above. Further, it appears that the Port relies solely on CARB regulations to meet the goals stated in the Plan, rendering the Plan unhelpful at best. The Plan appears to elaborate in great detail on the challenges in merely complying with state regulations. The Port would be better served shifting the voluminous details of challenges into efforts towards removing barriers to achievement of greater emission reductions. The Port must include commitments to health protective goals, including the measures and concrete steps that the Port will take to meet these goals.

⁴ CARB, Diesel Particulate Matter Health Risk Assessment for the West Oakland Community, March 2008.

In addition, any HRA's conducted as part of CEQA or under the MAQIP should assess the level of cancer risk, as well as non-cancer risks from port operations, and evaluate cumulative risk. We also urge the Port to embrace the ultimate goal of "no risk" from port operations. Lastly, the MAQIP should include assurances that any future expansion projects will include reductions in criteria pollutants above and beyond what CEQA requires to maintain compliance with air quality standards and health protective emissions levels.

II. Initiatives and Control Measures: The MAQIP must include discrete commitments to control measures and emission reduction programs by:

- Providing clear commitments, time lines and implementation schedules for each of the control measures necessary to meet the above goals.
- Providing for each control measure, the percentage of participation/compliance by the targeted source and compliance dates.
- Estimating the emission reductions from every control measure and disclosing all assumptions made to reach the emission reductions reported.
- Providing backstop measures in the event that the Port is unable to meet expected emission reduction targets.
- Utilizing lease-based approaches to maximize early emission reductions and ensure compliance with all measures.

III. Emissions Inventory: The current emission inventory significantly underestimates the emissions from port trucks and thus significantly underestimates the Port of Oakland's total contribution to regional air pollution. The Port must rectify the omission of vast amounts of truck related pollution from its emission inventory, as urged by many stakeholders previously.⁵

For each source of pollution, the Port should graph estimated emissions over time that clearly highlight and differentiate the emission reductions expected from current regulations, natural turnover (if any) versus MAQIP measures.

IV. Global Warming Impacts: The absence of any discussion or commitment to address the Port's contributions to global warming impacts demonstrates an alarming lack of leadership and comprehension of the gravity of climate change. It is incumbent upon the Port, which fundamentally bases its business on global warming pollution producing fossil fuel, to recognize global warming as one of the greatest challenges currently facing humanity, and incorporate measures to reduce global warming pollution in all Plans.

Climate change already had and will continue in greater severity to negatively impact the Bay Area as well as the rest of the world. Not only will the direct health impacts of

⁵ See: Coalition for Clean and Safe Ports, Seaport Emissions Inventory comment letter addressed to Omar Benjamin, August 20th, 2007.

global warming be severe, hotter temperatures and altered climate patterns will also lead to significant increases in air pollution. A projected sea level rise of up to 3 feet or more by 2100 will create turmoil in the Port's day-to-day operation. Thus it stands to reason that the Port would have every incentive, both economic and for health justice principles, to include measures to reduce greenhouse gas (GHG) emissions in the MAQIP. Finally, it is highly likely that measures will be developed to require GHG reductions from ports under California's Global Warming Solutions Act of 2006, AB 32. The Port of Oakland should take a proactive approach to meeting AB 32 goals.

- V. **Port Responsibility and Legal Authority:** As the "fourth busiest" container port in the nation,⁶ the Port of Oakland must take responsibility for pollution from its operations and assert its authority to mitigate this pollution. The Ports have the legal authority to require control measures through tariffs to maximize emissions reductions under the Plan. Because tariffs can be used to implement uniform rules applicable to all tenants, they can achieve emissions reductions faster than other approaches, and can serve as "backstop" measures in the event that lease-based measures, incentives, or voluntary programs fail to provide the reductions needed.
- VI. **Funding:** Improving air quality and protecting public health should remain the central goals of this Plan. Financial predictions and constraints are irrelevant to this process. The Port must take responsibility to ensure that any necessary funding is in place to support the goals of this Plan, including container or cargo fees whether Port initiated, or required by the state.
- VII. **Enforcement:** Without proper enforcement, it cannot be assumed that the health goals will be met, despite best intentions. A clear enforcement plan is missing from the MAQIP and must be added to ensure real emission reductions.
- VIII. **Land-Use Policies:** In order to maximize reductions in health risk on and off port lands, the Port must commit to adopting CARB health-protective land-use policies in its lease agreements and CEQA projects.⁷
- IX. **Public Process:** The Port must fully consider comments by the public and provide responses to these comments in a revised Plan. Additionally, the public must be provided sufficient time to review a revised Plan before agency action is taken. The Port should release frequent progress reports on the implementation of the plan. Moreover, the Port should continue the MAQIP stakeholder group on an ongoing basis to discuss future revisions to the Plan.

In closing, we agree with the following assertions made by CARB on the effectiveness of this Plan:⁸

⁶ <http://www.portofoakland.com/maritime/factsfig.asp>

⁷ See: CARB, Air Quality and Land Use Handbook: A Community Health Perspective, April 2005. <http://www.arb.ca.gov/ch/handbook.pdf>

- Emissions related to activities at the Port are significant and contribute to adverse public health impacts in nearby and surrounding communities.
- Voluntary measures are [*not*] sufficient to meet public health protection goals.
- The Port [should]...instead adopt *firm* commitments to actions that have interim goals and specific time-frames in the MAQIP.
- Actions can be taken sooner than ARB regulations require that will result in emission reductions prior to the 2020 time-frame.
- ...The Port...[should] review this List [of initiatives in the MAQIP] and select those that will result in *real* emission reductions.
- Once [effective measures are] chosen, we recommend the Port establish a *firm* commitment to these initiatives...

We thank all of the members of the MAQIP as well as Port and Air District staff for their hard work on this Plan. However, it appears that the draft Plan fails to incorporate many important recommendations made by MAQIP members or to utilize the extensive technical resources of many members and stakeholders. Thus, we strongly urge the Port to remediate this flawed Plan to address the many concerns raised here. We appreciate this opportunity to comment and would welcome any follow up conversations to clarify our concerns more with you or your staff.

Sincerely,
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⁸ Robert Fletcher, CARB, Letter to Delphine Prevost, Port of Oakland, January 7, 2008. *Emphasis added.*

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Cc: Port of Oakland Maritime Air Quality Improvement Plan Co-chairs
Omar Benjamin, Port of Oakland
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Brian Beveridge, West Oakland EIP
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MAQIP Task Force members, including representatives of:
Mayor Ron Dellums
Assemblymember Sandre Swanson
Senator Don Perata
Congresswoman Barbara Lee

City Councilmember Nancy Nadel
County Supervisor Nate Miley
County Supervisor Keith Carson
Swati Prakash, Pacific Institute
Ray Kidd, West Oakland Neighbors
Doug Bloch, Change to Win
Kent Lewandowski, Sierra Club
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