



**PACIFIC  
INSTITUTE**

*Research for People and the Planet*

Anne Whittington, Port of Oakland  
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July 14, 2008

Dear Ms. Whittington,

Please accept the following detailed comments on the draft Maritime Air Quality Improvement Plan released on June 13, 2008, submitted by The Pacific Institute.

**BROAD OBSERVATIONS:**

- 1) **The policy statement affirmed by the Port of Oakland's Board of Commissioners setting clear, health risk reduction goals for the Port is seriously undermined by the equivocating language and pessimistic tone found throughout the draft MAQIP.** There is a conspicuous absence of a single affirmation of commitment or intent on the part of the Port to take action to reduce emissions. This raises serious questions about the value and purpose of this document as an actual master plan or even as a policy statement. The draft clearly states that the emission reduction goals set forth are only "potentially achievable," and has the net effect of lowering expectations to such depths as to make emission reductions from the Port appear to be an insurmountable task. This overemphasis on challenges and constraints rather than possibilities and leadership strengthens the observation that this is not an air quality plan.
- 2) **This draft of the MAQIP is unacceptable as an air quality improvement plan at all but simply a statement of goals and constraints. This draft does not meet four out of five of the criteria in the "Key Components Checklist" provided in January by several MAQIP task force participants.** (See Attachment A). This draft air plan is not what the MAQIP task force signed up to help create. The only element of a plan that this document includes is a clear, quantitative goal. However, the rest of what typically constitutes an air quality plan is missing: a commitment to meeting the goal, clearly defined strategies for meeting the goals, a description of how strategies will be implemented, tracked, monitored and / or enforced, and a budget. In fact, the plan as currently drafted may do more harm than good. The overall impact after reading the plan is to perceive the author as an institution incapable of defending its own stated concepts and principles, which has the net effect of undermining any public confidence in the Port whatsoever.

It is also of great concern that there is tremendous specificity as to what the Port will not do in pursuit of emission reductions, with no corresponding specificity as to what it will do. This undermines the description of this draft plan as a Master Plan (section 1.2.1) that sets forth policy direction and establishes a framework for future action, rather than providing specific details as to how the goals will be reached. If this document is indeed a Master Plan, then there would appear to be no place for statements such as "The Port would not wish to pursue

action that is certain to result in litigation,” (section 6.3) “the Port has neither the authority nor the resources to monitor its tenants and their business partners,” (section 1.2.2) and, in reference to Port-wide emission reduction requirements, “for a variety of reasons, this tactic is not desirable” (section 9.1).

- 3) **It is deeply disappointing that the Port has changed the parameters of the MAQIP mid-course and engaged in a unilateral drafting process.** The section in the introduction presenting the Port’s planning continuum, and defining the plan as a “master plan” with less detail, more vision, and more stakeholder participation, puts this end product in clear perspective that should have been provided at the beginning. It is demoralizing that the MAQIP task force is only seeing this planning continuum, at the end of 15 months of planning and MAQIP task force meetings. While we are aware of the changing nature of planning processes, we are disappointed that the Port has taken so much time of so many task force members during the planning process, only to change the parameters of the end product mid-course, and have gone into a unilateral drafting process to produce a document that can hardly be recognized as an air quality improvement plan.
- 4) **It is disturbing and inappropriate that the primary message of the MAQIP document is that the Port has far too little authority, and far too many constraints to realistically require or leverage significant reductions in emissions from its customers and tenants.** This message is contrary to the description of the Port’s legal authority presented by the Port’s own lawyer in public meetings, and contrary to the actions taken by the Ports of Los Angeles and Long Beach to reduce their emissions. The fact that the Port has chosen not to pool or leverage the authority of and cooperating with those agencies that do have the authority to require and enforce emission reductions, as many task force members encouraged them to do throughout the process, is very disappointing. The current draft does appear to be a useful background document or statement of purpose for the Port’s preparation and planning of programs and projects. However, it cannot be accurately described as an air quality improvement plan, a “master plan”, nor even a policy statement. A Statement of Potential Goals and Constraints would be a far more accurate and fair description.
- 5) **The draft MAQIP undermines the efforts of State regulatory agencies in several instances, while at the same time relying on the full implementation and compliance with State regulations to meet its stated goals.** The plan has a confusing and contradictory relationship to the implementation of State regulations for reduction emissions. Even though the projected emission reductions described in the plan, and the strategies for attaining plan goals rely heavily on the assumption that State regulations will be implemented and complied with in a timely fashion, the draft plan expresses a deep and contradictory pessimism about the “feasibility” of these regulations being implemented. In fact, section 6.3, the detailed description of the many challenges faced by the Port’s air quality improvement goals, goes so far in describing the challenges facing the timely implementation of CARB regulations as to have the effect of severely undermining the regulatory efforts of this State agency. “(N)ew emission reduction regulations adopted and proposed by CARB. . . are extremely aggressive. . . Technological, economic, or legal factors may result in suspension or postponement of certain requirements or deadlines,” and “experience tells us that 100% compliance is rarely achieved.” There is also no clear statement that the Port will cooperate with or coordinate in any way the implementation of state regulations.

## Detailed comments

### 1) *Introduction*

- Section 1.2.2 “Opportunities and Challenges” – briefly describes (4 sentences) the benefits of creating a MAQIP, and then spends three paragraphs describing challenges. These include the statement that “reaching those goals is only possible with strong statewide – and preferably national and international – regulations. This plan counts on the benefits of regulations to reduce emissions to levels close to the MAQIP goals.” This raises the question of why we should be creating a master plan if we can just rely on regulations to achieve our goals? The sentiment expressed in this paragraph, of needing strong regulations, is undermined several times later in the document when the authors repeatedly cite the likelihood that regulations will not meet 100% compliance.
- This section also reads in several places like a justification for non-action rather than an air quality improvement plan. The sentence “The Port has neither the authority nor the resources to monitor its tenants and their business partners” sets a tone of low expectations that is reinforced throughout the document.
- The description of the process presents a procedural history that makes it seem as if the Port came up with the process on its own. There should be some acknowledgement of the leadership of impacted community residents in creating the community co-chair method.

### 2) *Port of Oakland and its Seaport Operations*

- This section is long and seems marginally relevant. Why are there five pages dedicated to this book report-style description?
- There is no description of what this plan is actually focused on, which is air pollution from seaport operations.
- The tone of this section continues the dispiriting theme that runs throughout this document, “Although the Port of Oakland would really really like to reduce diesel pollution, we just can’t commit to doing because things are really hard for us.”
- This would be an appropriate place to acknowledge why the Port is developing this plan: the impacts (health and otherwise) of Port operations on local and regional communities.

### 3) *Technical and regulatory background*

- This section provides a summary and laundry list of state regulations related to goods movement, but does not commit the Port to cooperating to implement these regulations, or even set a goal of making sure these regulations are met.

### 4) *Port of Oakland Baseline Emissions and Health Risk*

- This section does not acknowledge that the Seaport Emissions Inventory has been soundly criticized for not accurately estimating emissions from Port trucks. It is simply not accurate to refer to section 3 of their Health Risk Assessment as “non-Port sources.”
- Page 4-4 presents “key findings from CARB’s study” which includes the CARB finding that elevated cancer risk from all sources of diesel pollution is 1200 in a million, and

provides a frame of reference that “the expected cancer rate from all causes, including smoking, is about 200,000 to 250,000 per million.” Nowhere in CARB’s documents do they include the reference to smoking as a background cause of cancer. The reference to smoking is misleading and is falsely attributed to CARB.

#### 5) *Port of Oakland Future Emissions and Health Risk*

- It is great to see that this section discusses the development of weighting (aka “incremental risk”) factors that account for the fact that sources of pollution that are closer to where people live and breathe contribute more to health risk, than sources of pollution that are further away. This section acknowledges that “on-road trucks generate the greatest potential cancer risk per ton of diesel PM emissions,” and give on-road trucks a weighting / incremental risk factor of 2.1 excess cancer cases in a million, per ton of PM emissions, as compared to ocean-going vessels at berth, which have a factor of 0.9. However (see notes for next section), the fact that these incremental risk factor are then essentially discarded in the creation of actual air quality improvement goals is extremely disappointing.
- The projection of future emissions relies on the assumption that Federal and state regulations related to goods movement will be implemented, although later in the document the author expresses clear pessimism that these regulations will in fact be implemented and receive full compliance. In other words, **in this section the Port takes credit for full implementation of regulations, and in a later section the Port undermines the goal of full implementation.** At the very least this suggests that the Port should project out future emissions assuming that some regulations will not in fact be complied with.

#### 6) *Air Quality Improvement Goals*

- The useful calculation that was presented in the previous section, of a weighting or incremental risk factor for different sources of diesel pollution, is completely ignored in this section. Despite having done the work to actually come up with the weighting factor, the report author states “the Port assumed a one-to-one correspondence between emissions and risk.” (Note that this section falsely states that the Task Force also made this assumption, despite a clear memo presented at the December 10 meeting by a substantial number of task force members calling attention to the fact that “a 1:1 relationship between emissions reduction and risk reduction should not be assumed.”<sup>1</sup>)
- The presentation of diesel PM reduction goals (section 6.2.1) is prefaced as “The following goals are ambitious , but potentially achievable.” This is not even setting a goal, let alone making a commitment to meeting that goal. It is a way of sending a loud and clear message of extremely low expectations and preparation for failure.
- Section 6.3, Challenges, is bizarre, out of place, excessively detailed and inappropriate for this, or indeed any section of this document.

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<sup>1</sup> “Sample Outline of a Comprehensive Maritime Air Quality Improvement Plan, December 10, 2007. Presented by Swati Prakash, Pacific Institute.

- It begins with a declaration that CARB regulations are not likely to be complied with in a timely fashion. **For a semi-public entity like the Port of Oakland to directly and in writing undermine the efforts of another public agency like the Air Resources Board in this detailed manner is astonishing.** This declaration is also tantamount to the Port declaring that it may not cooperate with the implementation of these regulations, as they expect that “technological, economic, or legal factors may result in suspension or postponement of certain requirements or deadlines,” or that some of the CARB regulations “may be contested” through the legal system. This section also undermines the statement in section 1.2.2 that reaching the goals of the MAQIP is only possibly with strong regulations.
- The document states that “The Port would not wish to pursue action that is certain to result in litigation,” which is tantamount to telling external stakeholders that the threat of a lawsuit is all that is needed to stop any potential action by the Port to reduce air pollution emissions associated with Port operations.
- Taken as a whole, **this sub-section codifies the Port’s commitment to low expectations, and has the effect of rendering this draft plan actually worse than no plan at all.**
- This section does acknowledge that the CARB Health Risk Assessment “indicates that even more ambitious emissions reductions may be needed to reach the MAQIP risk reduction goals.” However, this observation is just depressing given that it is squeezed between so many statements indicating that even the modest emission reduction goals set forth in the MAQIP may be impossible to achieve in light of the many challenges.

#### 7) *Emission Reduction Strategies*

- This section references “examples” of emission control strategies that “can potentially be applied to Port-related sources of diesel emissions.” This is not a description of what strategies *will* be used to reduce emissions, which is what a standard air plan would have. It is more of a laundry list appropriate for book report style writing, and in no way defines what strategies the Port intends or expects to pursue.
- This section states that “achieving the intended emissions reductions benefits will require enforcement by regulatory agencies including CARB and BAAQMD, with cooperation from the Port.” This sentence seems out of place considering the implications in the previous section that the Port is reluctant to cooperate.

#### 8) *Air Quality Improvement Initiatives*

- If the list of “selected initiatives” had been collaboratively selected, defined and designed, this section would be the closest thing to the commitment to specific emission reduction measures that many task force members have been asking for in this MAQIP. In other words, section 8.3 is the closest thing to an actual air plan, yet it lacks the following traits of a collaboratively developed air plan:

- The initiatives were not really selected with input from community stakeholders
- There is no estimation of expected emission reduction benefits
- There is no actual commitment to implementing any of the programs or plans.

## **9) *Implementation***

- The language and tone in this section continues the theme of “why the Port of Oakland can’t actually do very much to effect pollution emission reductions.” In describing lease provisions, the document states that “success depends largely on market and competitive conditions,” which seems like another obvious but internal observation, not something to include in an air quality improvement plan.
- Similarly, the document states clearly that imposing “emission reduction requirements or projects by the Port, if and when necessary. . . is not desirable.” This statement, which is effectively a public promise not to impose such requirements, does not belong in this document.

## **10) *Monitoring and Reporting***

- The section describing a goal of updating CARB’s West Oakland health risk assessment as a way to track progress towards diesel PM cancer risk reduction is a good addition. This subsection is more in line with how air plans are typically written.
- There is a sub-section on “adaptive management,” which is a term first put forward by some task force members (Pacific Institute, EPA) to describe the possible need to correct course during the process of implementing the MAQIP, if it seems that the implementation is not likely to lead to achieving the goals of the plan. In this sub-section, this common understanding of what adaptive management means is turned inside-out to refer instead to a process of managing down to meet low expectations, rather than managing up to attain goals: “(A)n adaptive management approach could dictate changes that range. . . to canceling a project entirely.”

In closing, I would like to extend my appreciation to all of the staff at the Port of Oakland, and to all the participants on the MAQIP task force, who worked hard for many many hours over the past year and a half to pull together an air quality improvement plan. As one of the MAQIP task force participants, I also have to express my deep disappointment in the Port as an institution which has chosen to produce a draft of an air plan that few people would be proud of. I believe that the Port is capable of much more, and that the hundreds of hours of time that has gone into this product will not have been a waste. If the Port’s overriding consideration at this point is that an air quality plan with any more substance than this draft will result in a massive loss of customers (a contention that is backed only with rhetoric and has yet to be substantiated with any data whatsoever), then perhaps it should consider reframing and retitling this document as something other than a Maritime Air Quality Improvement Plan. But to attempt to portray this document as a plan to protect community health, a plan that is worthy of public acceptance is completely unacceptable.

Sincerely,

Swati Prakash  
Program Director, Community Strategies for Sustainability & Justice

**Attachment A**  
**Evaluation of June 2008 Draft MAQIP against “Key Components Checklist”**

1. **Goals.** Does the plan set clear, quantitative goals and timelines, and commit to meeting them?
  - a. Does the plan define clear quantitative goals (emissions, risk, dates)? **Yes**
  - b. Is there a clear commitment to meet the goals? **No.**
  
2. **Strategies.** Does the plan clearly define how the goals will be met? **No. The plan presents possibilities, but no clear definition of how goals will be met.**
  - a. Does the plan clearly define what specific measures\*\* will be implemented to meet the goals? **No. The plan describes “examples” of emission control strategies that “can potentially be applied,” and presents air quality improvement initiatives that “have been selected for further study and probably implementation,” but does not clearly define what measures will be implemented, not even to affirm that regulatory measures will be implemented.**
  - b. Does the plan clearly define strategies / measures for each sector of Port activity, and for new projects? **Yes, strategies and measures are described, but without any commitment to implementation.**
  - c. Does the plan define the process in which additional measures will be considered and incorporated in the future? (What will trigger consideration of additional measures; what criteria will be used; who will decide?) **No.**
  - d. Does the plan include a technical demonstration that the strategies will attain the goals, including a projection of emissions reductions that come about as a result of implementing the measures adopted in the **plan**? **No.**
  
3. **Implementation**
  - a. Does the plan clearly describe how each strategy will be implemented? **No. The plan describes the general process for developing emission reduction strategies, and refers to the development of programs and projects as the appropriate levels at which these strategies will be designed, including an implementation plan. The document does have a section on “implementation” which does describe a broad and generic implementation approach. This section devotes more lines to defining limits of authority than to describing anticipated methods for implementing actual pollution reduction measures / strategies.**
  
4. **Tracking, monitoring and reporting.**
  - a. Measures: Does the plan define how implementation of each measure will be tracked, including:
    - ✓ What recordkeeping will be required? **No**
    - ✓ What indicators of compliance and progress will be required? **No**
    - ✓ Who will do this, and what are the key compliance dates? **No**

**It appears that the plan refers to the development of programs and projects as the appropriate levels of planning at which these questions are answered.**
  - b. Tracking: Does the plan clearly define how progress towards, and attainment of, the goals will be tracked? (What indicators are tracked, reported to whom, when?) **Yes.**

- c. Plan revision / adaptive management: Does the plan describe adaptive management measures and what corrective actions will be taken should there be a shortfall in progress? **Partial yes. While a short adaptive management strategy is described, it appears oriented towards managing feasibility constraints, rather than addressing the question of what corrective actions will be taken should there be a shortfall in progress.** (How will the plan be revised, by whom, on what timeline? What are the consequences for failure to meet the goals, or failure to correct the plan? **This question is not answered.** )
- d. Plan budget: Does the plan include estimates of adopting plan strategies and measures, **No** and lay out strategies for generating sufficient income / revenue to fund the plan? **Partial yes. There is a section on funding strategies, but these are not quantified, and do not answer the question of whether sufficient revenue will be raised to fund the plan.**

## 5. Enforcement.

Does the plan clearly spell out, for each measure, the enforcement responsibilities and mechanisms? (Who will oversee and determine whether each measure is being complied with? Who has enforcement and penalty authority?) **No. Appendix E does appear to be a matrix of agency responsibilities, but this appendix is not referenced in the body of the document.**

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\* The reader/reviewer of the plan should be able to say where in the plan each of the questions are answered. If the answers are located in other documents, how are those documents referenced/incorporated in the plan?

\*\* The terms “strategies” as used here is interchangeable with “measures”, and are applicable to specific sources, source categories, or new projects.