



TO: Anne Whittington
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FROM: Brian Beveridge,
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RE: COMMENTS ON THE PORT OF OAKLAND MARITIME AIR QUALITY IMPROVEMENT PLAN (MAQIP)

It is now a commonly understood fact that the Port of Oakland’s Maritime Air Quality Improvement Plan (MAQIP) is not an air quality mitigation plan in the formal sense as defined by regulators and academia, but a broad vision statement now called, the “Master Plan”. In essence, it is a framework for planning and not a plan in itself. While the MAQIP process has been an admirable exercise in public engagement, and we at WOEIP are proud to have brought the collaborative model of our Toxics Reduction Collaborative (WOTRC) to the process, it became apparent early on that Port management and staff had no intention of creating a plan for action. Much was offered, by regulators and non-profit science groups, in the way of assistance in creating a meaningful plan. Many methods were put forth to move the document toward a productive approach to real health risk reductions, but all were ultimately rejected in favor of a vision statement painted in the broadest of strokes.

We recognize that the Port of Oakland lacks the capacity to produce and implement a detailed emissions reduction plan. Therefore, Port management must enlist the assistance offered by Federal, State and regional agencies in writing a meaningful plan that will achieve predictable air emissions reductions. The Port must cease its systematic delaying tactics in which it has deflected specifics, protected its business partners and defended its right to do nothing.

PROBLEMS WITH THE “PLAN”

- **No stated intention.** The Master Plan states an admirable goal of 85% reduction in health risk for the residents of West Oakland, but nowhere does it say what the

Port will do to achieve that goal. The Port of Oakland must clearly state its intention to achieve specific air quality improvement targets.

- **The “plan” lacks important components.** The Port’s own consultants, Environ, are professionals at writing air quality remediation plans, but even their contributions, rewritten by Port staff, show little in the way of concrete details.
- **No stated role for the Port.** The Master Plan contains many lists of possible actions, lists of possible authority, lists of funding programs and lists of constraints on both actions and authority, however, nowhere does it state a specific action the Port of Oakland will take or authority that the Port intends to exercise to achieve measurable air quality improvements.

The Port could define its role as a solutions incubator, a funding conduit, a project evaluator, or it could systematically track project success in a transparent public process; but it has defined no such specific role for itself. The Master Plan shows the Port, in essence, as *an interested non-participant hoping for the best*.

- **Overt abdication of authority to its business partners.** The Plan is fundamentally “self-neutering” when in Section 1.2.2 it states: “The Port has neither the authority nor the resources to monitor its tenants and business partners or enforce compliance... called for by current or anticipated regulations.”

This patently false because the Port’s own attorney has stated publicly that the Port has the authority, and presumably the resources, to place whatever terms it wishes in its lease agreements with its tenants. The Port can also use concession agreements to set terms of operation and compliance for its contracted vendors. Port-wide tariffs are commonly used to establish even-handed requirements for all tenants and customers.

The MAQIP representative for the Pacific Maritime Shipping Association stated publicly at a task force meeting that lease terms were a practical approach to setting standards at the ports. Still, the Port of Oakland has not committed to such action in the language of the MAQIP.

- **Inadequate commitment to staffing.** Port management has consistently understaffed the environmental mitigation and planning departments. More than half-way through the MAQIP process the lead staff person on the Plan was transferred and another staffer, unfamiliar with the Task Forces deliberations, was assigned the task of drafting the final document. This added many weeks to the drafting process.

Port management has stated that program level work, as appears in the Comprehensive Truck Management Program, is where the real details for community risk reduction will be determined and yet only one planner is assigned

to that process. The Port of Los Angeles by comparison has 20 staff people assigned to its Air Plan development and implementation.

- **Using economics as a constraint on risk reduction and environmental justice.** State guidelines in the Goods Movement Action Plan declare that economic constraints shall not be considered when implementing air quality improvement programs. In spite of this, the Port of Oakland has consistently listed market competitiveness as its number one concern in air quality planning. This sends the clear message that public health and air quality improvements are secondary concerns of this port.
- **“All volunteer” air quality improvement.** The core of the Port’s Air Plan is the request that its business partners voluntarily “do the right thing” and the expectation that all concerned will “follow the law.” The regulators on the MAQIP Task Force have said both publicly and privately that voluntary measures are not dependable and generally fall short of gains achieved through regulatory pressure. We, the tax-payers of California, have committed billions of dollars to help the goods movement industry clean-up and grow, simultaneously, the Port of Oakland must commit to helping prove we are all getting our money’s worth.
- **Port as public trustee.** The Port of Oakland has a legal obligation to use tideland areas for the public good. It follows that the Port must not use those assets to the detriment of the public. The public health risk from port operations has been clearly defined by regulators and academia alike. The US Environmental Protection Agency declared petroleum particulate matter to be a carcinogen and the California Air Resources Board Health Risk Assessment of West Oakland found extremely elevated risk of cancer to residents of our fence-line community. The Alameda Department of Public Health has declared that West Oakland residents face a lifespan that is ten years shorter than that of residents in the near-by Oakland hills neighborhoods. In light of this clearly defined public health crisis, the Port Commission, through the Executive Director, has both the authority and the responsibility to act to assure port-related health risks in the community are reduced as soon as technologically possible.
- **Public asset at put at risk by inaction.** Due to the fact that the Port has accepted Federal funds for expansion projects like the channel deepening, failure to act on emissions reductions may open the agency to a Federal Title VI complaint. Failure to act in the face of this knowledge may violate the Tidelands Trust Doctrine and put control of the Oakland shoreline at risk of State seizure.

NEED FOR ACTION

If financial support for the Port is needed during these difficult economic times, then the Port Commission and Mayor of Oakland must bring their combined power to bear on this critical issue. But first, the MAQIP must be rewritten to clearly declare the City and Port’s intention to stop polluting the flatland neighborhoods of Oakland. Both public health and legal liability hang in the balance. The Port of Oakland is an agency of the

City of Oakland, expressed in the Oakland City Charter, and must end its isolationist policy, which attempts to hold the public at bay while defending the interests of business.

The City Council, as Oakland policy makers, also has a vital role to play and possibly a position of legal liability, if its Port does not adequately address the life and death impacts of the freight industry on the people of Oakland.

Sincerely,

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