

Comment Letter #65

SAN PEDRO BAY PORTS CLEAN AIR ACTION PLAN

July 5, 2022

Ian MacMillan, Assistant Deputy Executive Officer
South Coast Air Quality Management District
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Submitted electronically at AQMPteam@aqmd.gov

Dear Mr. MacMillan:

SUBJECT: SAN PEDRO BAY PORTS COMMENTS ON THE DRAFT 2022 AIR QUALITY MANAGEMENT PLAN

The Port of Los Angeles and Port of Long Beach (Ports) appreciate this opportunity to provide comments on the Draft 2022 Air Quality Management Plan (AQMP) prepared by the South Coast Air Quality Management District (SCAQMD). The Draft 2022 AQMP lays out a suite of measures targeting emission reductions from the goods movement sector, chief among them being indirect source rules (ISRs) directed towards ports and intermodal railyards. Unfortunately, the Draft 2022 AQMP does not address important questions and concerns that the Ports have raised about previous concepts for a Port ISR to regulate maritime freight mobile sources.

The Ports remain firm in our position. First, outside of our own limited fleet of vehicles, the Ports do not control and do not have authority to regulate mobile sources. Therefore, the Ports cannot be held accountable for mobile sources under an ISR. Second, SCAQMD also has no authority to regulate mobile sources, whether directly or indirectly under the guise of an ISR program.¹ As a result, SCAQMD's attempt to regulate the Ports as "indirect sources" is unlawful, unproven, and unnecessary given the success of voluntary programs among industry to reduce emissions of port-related sources. The Ports hereby incorporate by reference our past comments dated August 19, 2016, November 7, 2016, February 2, 2017, and February 27, 2017 related to SCAQMD's concepts for a Port ISR in SCAQMD's Draft 2016 AQMP. Further details regarding the Ports' concerns with respect to a Port ISR are included in the Attachment.

¹ The Ports relayed this position in multiple letters to the SCAQMD in connection with the 2016 AQMP. See, e.g., November 7, 2016 letter from the Ports to SCAQMD, pp. 10-14, 21-24.



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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

Mr. Ian MacMillan
July 5, 2022
Page -2-

More Details Needed

While the proposed measures are mentioned as important avenues for achieving “fair share” emission reductions from freight facilities, the Draft 2022 AQMP lacks details on how these emission reductions are to be achieved, the amount of emission reductions expected, and the timeline for achieving emission reductions. For example, greater detail is needed on the proposed Off-Road Mobile Source Emission Reduction Credit Generation Program (MOB-10) and how that program will work in conjunction with the facility-based measures to achieve early, surplus emission reductions. Additionally, while the Ports’ Clean Trucks Programs and the California Air Resources Board’s (CARB) Advanced Clean Fleets rule advance the turnover towards zero emissions drayage trucks, it is unclear from the Draft 2022 AQMP what additional emissions reductions SCAQMD could achieve by regulating these sources. Further, trucks are federally preempted sources that are beyond SCAQMD’s regulatory jurisdiction.

The Ports appreciate the detailed analysis on the challenges with achieving emission reductions from federally preempted sources as laid out in the Draft 2022 AQMP. Federally preempted sources, namely ocean-going vessels and locomotives, contribute the majority of the emissions from the Ports. While the Ports have multiple, successful voluntary programs to incentivize emission reductions from federally-preempted ocean-going vessels (e.g., Vessel Speed Reduction Program, Green Ship Incentive Program, Environmental Ship Index, Green Shipping Corridor), it is unclear from the Draft 2022 AQMP what additional emission reductions SCAQMD hopes to achieve from these federally preempted sources through either the Port ISR or its own ship incentive program referenced as the Pacific Rim Initiative for Maritime Emission Reductions (PRIMER). Rather than introducing a new vessel incentive program, such as PRIMER, the Ports propose that SCAQMD partner with the Ports in enhancing our current vessel programs in order to further encourage voluntary emission reductions from this challenging source category by utilizing funding structures that are already in place.

Ensure Incentives Programs (MOB-11) Are Available

In addition to lack of important details, some measures are duplicative and raise questions about accounting for emission reductions under the State Implementation Plan (SIP). For example, we believe SCAQMD’s Proposed Rule 2304, Commercial Marine Ports Indirect Source Rule (AQMP Measure MOB-01 or Port ISR) is unnecessary given that CARB, the United States Environmental Protection Agency (USEPA), and the International Maritime Organization (IMO) have recently passed or proposed aggressive measures for the five mobile sources for which reductions are sought (on-road heavy duty vehicles, ocean going vessels, cargo handling equipment, locomotives, and harbor craft) as listed on Table 4-4.² Given these recently passed and proposed regulations on multiple source

² AQMD acknowledges on pages 4-58 and 4-59 of the AQMP that AQMD has limited options to regulate the few sources that remain unregulated by other entities by stating, “There are few sources remaining

Mr. Ian MacMillan
July 5, 2022
Page -3-

categories, further discussion is needed in the Draft 2022 AQMP regarding how SCAQMD is going to ensure that emissions and their associated reductions from the goods movement sector are not double counted as credits under the SIP.³

As highlighted in the Draft 2022 AQMP, both voluntary measures and incentive programs are necessary components of a comprehensive emission reduction strategy, particularly given the large amount of emission reductions needed from preempted sources. The Ports in particular rely on these types of programs to achieve emission reductions because we lack regulatory authority over maritime freight mobile sources. While the Ports have made, and continue to make, large investments into emission reduction incentive programs such as our vessel incentives and the CAAP Technology Advancement Program, the only way to fund further turnover to zero-emission equipment, vehicles, and vessels, is to ensure that public funding from federal, state and district grants remains accessible. Given the aggressive timetable from CARB regulations to transition to zero emission, it is critical that the regulatory agencies do not place undue limitations on grants availability to comply with current and future zero-emission laws for port-related mobile sources, under theories of gift of public funds or otherwise. For instance, grant funding from government sources would not be available for activities taken to comply with regulations, so a Port ISR could be counterproductive to efforts to minimize emissions and achieve community health benefits, as opposed to voluntary measures, which would allow for continued use of government funding sources. At a minimum, the 2022 AQMP must outline under MOB-11 how incentive funding will remain a viable pathway for achieving emission reductions when transitioning to zero emission is required by regulation.

In closing, the Ports believe that SCAQMD's attempt to regulate the Ports as "indirect sources" is unlawful, unproven, and unnecessary. Further, we strongly encourage the SCAQMD to consider the issues identified herein.

without a control measure implemented by CARB, and those that do remain are primarily-federally regulated sources (Figure 4-7). This includes interstate trucks, ships, locomotives, aircraft, and certain categories of off-road equipment, constituting a large source of potential emission reductions. Since these are primarily regulated at the federal and, in some cases, international level, options to implement a contingency measure with reductions approximately equivalent to one year's worth of emission reductions are limited."

³ On page IV-A-212, under a paragraph entitled, "Rule Compliance", AQMD acknowledges the possibility of duplicate counting by stating, "If other enforceable mechanisms are established outside of the South Coast AQMD public process, or the State or federal government implement regulatory actions, that achieve equivalent emission reductions, compliance will be enforced through the provisions of those actions."

Mr. Ian MacMillan
July 5, 2022
Page -4-

We look forward to continuing to work with the SCAQMD on advancing our shared goals for clean air in the South Coast region. Should you have any questions regarding this comment letter, please reach out to Morgan Caswell, Manager of Air Quality Practices at the Port of Long Beach, at morgan.caswell@polb.com, or Tim DeMoss, Environmental Affairs Officer at the Port of Los Angeles, at tdemoss@portla.org.

Sincerely,



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Director of Environmental Planning
Port of Long Beach



CHRISTOPHER CANNON
Chief Sustainability Officer
Port of Los Angeles

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Attachment: Ports' 2022 AQMP Detailed Comments

Ports' 2022 AQMP Detailed Comments

These comments are a part of the joint comment letter submitted on July 5, 2022, by the Port of Los Angeles and Port of Long Beach (Ports) on the 2022 Draft Air Quality Management Plan (AQMP). These comments largely focus on a major concern for the Ports, the South Coast Air Quality Management District's (SCAQMD) Proposed Rule 2304, the Indirect Source Rule for Commercial Marine Ports, to the extent that it is proposed to be included in the 2022 AQMP and 2022 State Implementation Plan (SIP). When SCAQMD releases more information on Proposed Rule 2304, the Ports will provide more specific comments to SCAQMD on the proposed rule.

Background: Proposed Port Indirect Source Rule (PR 2304 or Port ISR)

- SCAQMD is proceeding with the following Indirect Source Rules (ISRs) under its Facility-Based Mobile Source Measures, listed by AQMP control measure number in the 2022 AQMP and Appendix IV-A thereto:
 - MOB-01 - Proposed Rule 2304: Commercial Marine Ports Indirect Source Rule (rulemaking beginning in 2022)
 - MOB-03 - Rule 2305: Warehouse Indirect Source Rule (adopted in 2021 by the SCAQMD Board and currently in litigation)
 - MOB-02A - Proposed Rule 2306: New Rail Yards and Intermodal Facilities Indirect Source Rule (rulemaking targeted for SCAQMD Board decision in 2022)
 - MOB-02B - Proposed Rule 2306.1: Existing Rail Yards and Intermodal Facilities Indirect Source Rule (SCAQMD expressed intention to commence rulemaking after Rule 2306 adoption)
 - EGM-01 - Proposed Rule 2301: New and Redevelopment Projects (rulemaking status unknown)
- SCAQMD ISRs Generally: Indirect Source Rule authority in the Federal Clean Air Act is limited and may have taken on a broader concept by SCAQMD in its application in the above AQMP measures, particularly the Port ISR. The Rule 2305 Warehouse ISR was legally challenged in 2021 on federal preemption and authority grounds in *California Trucking Association (CTA) v. SCAQMD*¹ (CTA Warehouse Litigation), which litigation remains pending. Many of the concerns reflected in the CTA Warehouse ISR Litigation apply to proposals to implement ISRs with respect to Ports and marine terminals.
- Port ISR Background: For many years, SCAQMD's Port ISR concept purported to address regulation of mobile sources transiting the Ports, operated by the marine freight industry at the Ports' harbor properties by imposing obligations jointly and severally on the Ports as municipal landlords who do not own/control the mobile source equipment. For years in comment letters to SCAQMD, the Ports have objected to this proposed Port ISR structure as improper for various substantive reasons, including without limitation, jurisdiction, authority and preemption.² These concerns continue, after either no response or insubstantial responses from SCAQMD in the past.
- In 2020 discussions of potential Port ISR concepts, SCAQMD Staff changed this concept and suggested that SCAQMD may impose the Port ISR on terminal operators rather than the Ports. However, SCAQMD only recently (June 11, 2022) posted a Port ISR working group presentation stating the

¹ *California Trucking Association v. SCAQMD, et al.*, U.S. District Court, California Central District Case No. 2:21-cv-6341, Complaint for Declaratory Judgment and Injunctive Relief (2021).

² For instance, the Ports filed joint comments on August 19, 2016, November 7, 2016, February 2, 2017, and February 27, 2017 related to AQMD's concepts for a Port ISR in SCAQMD's Draft 2016 AQMP.

Potential Rule Applicability is “TBD,” among possible regulated entities listed as Terminal Operator, Terminal Owner and Port Authority.

- Whether an ISR is imposed on POLA/POLB as a single source, or on marine terminals within a port area, none of these SCAQMD regulatory approaches to date has satisfactorily resolved answers to important questions and concerns that the Ports have previously raised over several years to CARB and SCAQMD about their previous concepts for a Port ISR to regulate maritime freight mobile sources. Therefore, the Ports again provide comments opposing SCAQMD’s Port ISR and intent to include it in the 2022 AQMP and 2022 SIP.

MAJOR CONCERNS

The Ports have consistently supported federal and authorized State mobile source regulations and the Ports’ voluntary measures to help the maritime freight industry reduce mobile source emissions at the Ports. However, the specific requirements of the federal Clean Air Act, various federal statutes and international commitments that govern trucking regulation and maritime issues, and California state law all underscore that the SCAQMD lacks authority to regulate mobile sources, either directly or under the guise of an ISR program. While the Ports have expressed these concerns previously in various contexts, we recapitulate our concerns here.

EPA and CARB are the Appropriate Authorities for Regulation of Mobile Source Emissions.

- Since 2020, CARB has used its mobile source regulatory authority under EPA authorizations and waivers to adopt significant mobile source regulations. The Ports support these regulations which attempt to control emissions from mobile sources in and around the Port leveraging the appropriate authority. Under the Biden administration, potential federal regulations are expected to require even more emissions reductions that will extend to various aspects of the marine freight industry.

Among measures taken by CARB to date are:

- Heavy-Duty Low NOx Omnibus Regulation – adopted August 2020
- Advanced Clean Trucks Regulation with zero-emission targets – adopted June 2020
- Ocean-Going Vessels At Berth Regulation -- adopted June 2020
- Commercial Harbor Craft Regulation – adopted November 2021, and pending final action from the Office of Administrative Law

Regulations under development by CARB include:

- Proposed Advanced Clean Fleets Rule (includes proposed in-use zero-emission heavy-duty truck requirements for port and railyard drayage fleets)
- Transport Refrigeration Units (TRU) Regulation (specific to Ports)
- SCAQMD notified the U.S. EPA, via a letter dated April 15, 2022, of ongoing violations under the federal Clean Air Act for failure to take timely action on a State Implementation Plan (SIP) and urged EPA to take action to regulate and reduce federal emissions in order to meet National Ambient Air Quality Standards. It would be impossible to attain the standard without the required reductions from federal sources.

Neither the Clean Air Act nor the Health and Safety Code authorizes the SCAQMD to adopt a Port ISR.

- SCAQMD has identified no law that expressly grants it authority to impose an Indirect Source Rule on seaports operating as shipping harbor locations as though they are new or modified “indirect sources,” as defined by section 110 of the federal Clean Air Act.
- The Clean Air Act defines an indirect source as “a facility, building, structure, installation, real property, road, or highway which attracts, or may attract, mobile sources of pollution.” (42 U.S.C. § 7410(a)(5)(C).) An “indirect source review program” is “the facility-by-facility review of indirect sources of air pollution, including such measures as are necessary to assure, or assist in assuring, that a new or modified indirect source will not attract mobile sources of air pollution” that would contribute to the exceedance of the National Ambient Air Quality Standard (NAAQS). (42 U.S.C. § 7410(a)(5)(0)(i).) The Ports and terminals located at the Ports are not explicitly defined as indirect sources. Each consists of multiple indirect sources, as do the cities themselves. (See, e.g., 39 Fed. Reg. 25,292, 25,300 (July 9, 1974) (which did not list ports as possible indirect sources).) Given the multiplicity and diversity of activities at the Ports, it makes as little sense to consider the Ports to be indirect sources as it would to consider any other large geographic or municipal area to be an indirect source. The Ports of Los Angeles and Long Beach were developed as adjacent natural harbors of the San Pedro Bay more than a century ago (Port of Los Angeles was founded in 1907 and Port of Long Beach was founded in 1911), with each City granted the statutory duty to “promote maritime commerce” at their respective ports. That seaports attract ships and require inland cargo transportation to ultimate destinations does not create authority to the SCAQMD to regulate all mobile sources used in maritime commerce that may visit the Ports. This misguided theory has no support in law.³
- SCAQMD has previously argued that it has the authority to issue a Port ISR pursuant to several provisions of the Health & Safety Code. Health & Safety Code, §§ 40000, 40001(a), 40410, 40440, 40716, and 39602. In fact, SCAQMD’s authority to adopt regulations is limited, and neither the cited statutory provisions nor any cases interpreting their provisions provide SCAQMD with direct authority to adopt an indirect source review program with respect to the Ports. Constraints on SCAQMD’s statutory latitude to impose ISR regulation on major seaports are at least as extensive as those identified in the CTA Warehouse ISR litigation.
- Continuing to rely on general “police powers” and on *Cal. Sch. Bds. Ass’n v. State Bd. Of Equalization*, 191 Cal. App. 4th 530, 544, for the proposition that specific language is not necessary to support its authority to enact a Port ISR implies that SCAQMD’s lawful authorities are limited only by internal self-dispensation of powers not expressly granted by statute. The Ports continue to disagree on whether the “plain meaning” of SCAQMD’s enabling statutes provide the necessary authority to SCAQMD to issue a Port ISR.

³ SCAQMD’s original ISR premise generally defined the two Ports as a single indirect source against which specific emission reductions targets would be set with deadlines. The San Pedro Bay Ports are two distinct ports (POLA and POLB), owned separately by two independent cities (Los Angeles and Long Beach), operated under separate Tidelands grants, and operated separately on more than 7,500 acres and 7,600 acres of property, respectively. The Ports include numerous emissions sources -- mobile sources, buildings, and facilities -- just like any other large geographic area or governmental entity. Therefore, the Ports are fundamentally different entities than those lawfully regulated as indirect sources.

- *National Association of Home Builders v. San Joaquin Valley Unified Air Pollution Control District*, 627 F.3d 730, 736-737 (9th Cir. 2010) ("*National Association of Home Builders*") does not support an ISR for the Ports. *National Association of Home Builders* involved mobile sources (construction equipment) at geographically limited construction sites involving single stationary sources. Geographic areas like ports and their terminals do not constitute a single facility and, therefore, no facility-by-facility review, as contemplated by the indirect source review program provisions of CAA, is possible for the Ports. POLA and/or POLB (either individually or collectively) are no more "indirect sources" than the cities of Los Angeles and/or Long Beach (either individually or collectively) are indirect sources. In addition, POLA and POLB are not "new or modified indirect emissions sources" for which an indirect source review program may be appropriate. *Id.* at 731-2. Despite SCAQMD's past arguments, *National Association of Home Builders* and the Clean Air Act's provisions relating to indirect source review programs set the bounds of SCAQMD's authority.

The Proposed Ports ISR would improperly regulate mobile sources and other emitting activities (e.g., vessels) outside of SCAQMD's authority.

- Congress did not intend or authorize the use of the indirect source review program provisions of the Clean Air Act as a way to circumvent federal authority to regulate mobile sources. (42 U.S.C. § 7410(a)(5)(C).) Congress vested the federal government with the authority to set nationwide emissions standards for mobile sources, including non-road mobile engines and vehicles. (42 U.S.C. §§ 7521, 7547.) Congress expressly and impliedly preempted states from setting standards or other requirements relating to the control of emissions for mobile sources. (42 U.S.C. § 7543, (a) & (e).) The Clean Air Act allows California to seek authorization from EPA to adopt "standards and other requirements related to the control of emissions" for some, but not all, mobile sources. (42 U.S.C. §§ 7543 (b) [on-road sources] & (e)(2)(A) [off-road sources].)
- Although a Port ISR would purport to cover all mobile sources, regulation of some mobile sources at the Ports would remain preempted under the Clean Air Act. A Port ISR could also unlawfully require the Ports to regulate emissions outside of their jurisdictional boundaries and vessels subject to the international MARPOL Treaty. (U.S. Const. art. 6, cl. 2; 33 U.S.C. §§1901 et seq.).
- Unlike the regulation at issue in *National Association of Home Builders*, a Port ISR would in fact regulate emissions from mobile sources located within the larger Port areas, not the Port sites or the terminals themselves. The SCAQMD's intent in adopting a Port ISR is to obtain emissions reductions from mobile sources beyond the reductions achieved pursuant to EPA or CARB regulations. Such regulation by SCAQMD of mobile sources is clearly preempted under the Clean Air Act. *See, e.g., Engine Manufacturers Association v. South Coast Air Quality Management District*, 541 U.S. 246, 253 (2004) (finding that regulations prohibiting the purchase or lease of motor vehicles that do not comply with emission standards were preempted); *see also Metropolitan Taxicab Board of Trade v. City of New York (Metro. II)*, 633 F.Supp.2d 83, 99 and 102-05 (S.D.N.Y.2009), *aff'd on other grounds by* 615 F.3d 152 (2d Cir.2010) (finding that an Ordinance that created incentives to increase taxi owners' use of hybrid or clean-diesel vehicles and disincentives to decrease their use of Crown Victoria model taxicabs "constitutes an offer which cannot, in practical effect, be refused" and was preempted); *Pacific Merchant Shipping Association v. Goldstene*, 517 F.3d 1108, 1114 (9th Cir. 2008) (Marine Vessel Rules were found to be "emission standards" preempted by the Clean Air Act); and *American Automobile Manufacturers Association v. Cahill*, 152 F.3d 196, 200 (2d Cir. 1998) (finding a New York law requiring that a percentage of cars sold be zero emissions vehicles had the purpose of "effect[ing] a general reduction in emissions" and was "in the nature of a command having a direct effect on the

level of emissions”, and thus was preempted by Section 209(a) of the Clean Air Act).

Major Mobile Pollution Sources in Port Operations are Extensively Regulated at the Federal Level. Trucking, Rail and Ocean Shipping Activities are Subject to Regulatory Structures that Create a Highly Preemptive Regulatory Environment Constraining Action by non-federal Actors.

The primary mobile sources of air pollution in the Ports are subject to a matrix of regulatory controls that are strongly weighted in favor of federal action. Where non-federal action is permitted, it is by virtue of express Congressional authorization (e.g., CAA § 116 -state regulation of stationary sources) or the grant of federally-issued waivers (e.g., CAA § 209(b) – California (CARB) authority to seek EPA waiver for mobile source emission standards that equal or exceed federal standards). Additionally, the trucking industry frequently and successfully invokes the Federal Aviation Administration Authorization Act of 1994 (F4A) as a shield against non-federal impositions that have the “force and effect of law.” 49 U.S.C. § 14501(c). The Ports, as “marine terminal operators” defined in the Shipping Act of 1984, are also required “to observe and enforce just and reasonable regulations and practices (46 U.S.C. §41102(c)) and are prohibited from imposing undue or unreasonable prejudice or disadvantage with respect to any person” (46 U.S.C. § 41106). The extent to which a Port ISR that applies to the adjacent Ports of Long Beach and Los Angeles would implicate these federal statutes has not been previously litigated. However, the 2007 CAAP was the subject of considerable litigation activity under the Shipping Act and F4A. The strong preemptive presence of federal statutory constraints on Port action, whether self-initiated or as required by non-federal authorities, cautions against strained and novel applications to mobile sources.

The Ports agree with this below 2022 AQMP statement:

“Given the bulk of the Basin’s NOx emissions in 2037 will be coming from federally regulated sources, the South Coast AQMD and the California Air Resources Board (CARB) cannot sufficiently reduce emissions to meet the standard without federal action. It is therefore imperative that the federal government act decisively to reduce emissions from federally regulated sources of air pollution, including interstate heavy-duty trucks, ships, locomotives, aircraft, and certain categories of off-road equipment.

Emissions from federal and international sources are estimated to be 92 tons per day in 2037 (see Figure ES-4). Even if all sources regulated by CARB and the South Coast AQMD were zero emissions, federal sources alone would emit substantially more than the 63 tons per day NOx limit, thwarting any other actions to meet the standard.”⁴

The Ports do not Control all Emitting Activities Within the Ports and thus Lack Authority to Enforce an ISR.

POLA and POLB are “landlord ports” that lease their land to approximately 50 marine terminal operators. Each marine terminal operator operates its own terminal and has contracts with shipping lines, railroads, logistics companies, and other parties in the goods movement chain. The Ports do not own, operate, or control through contracts, the actual purchase, operation, or deployment of mobile sources used in goods movement. The Ports are also not U.S. air regulatory agencies and lack authority to regulate mobile source or stationary source emissions. POLA and POLB, therefore, have no authority to enforce an ISR even if such regulations were within SCAQMD’s authority to enact, which they are not.

⁴ 2022 AQMP, Executive Summary, p.ES-6.

SCAQMD Attempts to Usurp the Ports' Authorities.

The Ports are separate governmental entities that have received separate Tidelands grants from the State of California. SCAQMD's attempts to control the Ports' discretionary decision to set the Ports' cargo rates, or a Port ISR covering the Ports, directly conflict with the Ports' own jurisdictions as governmental agencies and violate their Public Trust obligations as Tidelands Trustees. If a Port ISR requirement resulted in cargo diversion (thereby limiting cargo ships, trucks, or trains), it would also violate Public Trust obligations to provide access for and facilitate maritime cargo shipping facilities to the marine freight industry under the statutory Tidelands grant, the Los Angeles City Charter, the Long Beach City Charter, and, possibly, the federal Shipping Act.

- SCAQMD's imposition of a Port ISR that implements policies that differ from the Ports' own respective Board of Harbor Commissioners' decisions would essentially amount to a self-grant by SCAQMD of a superior or veto authority over policy judgments made by public officials charged by law with responsibility for overseeing Port activities. This directly conflicts with the Ports' own jurisdictions and obligations as governmental agencies to manage properties within their jurisdictions to promote maritime commerce.
- SCAQMD cannot lawfully act in a manner that impinges on the Ports' duties under their Tidelands Trust obligations, and cannot dictate cargo fee amounts or direct expenditures of Tidelands funds such as Clean Trucks Fund (CTF) Rate revenues. In addition, SCAQMD cannot use its indirect source authority to control marine freight growth or overrule local land use decisions. (Health & Safety Code, § 40716 [Air Districts cannot infringe on the existing authority of counties and cities to plan or control land use]; see *also* Health & Safety Code, §§ 40000, 40414, 40440.1, 40717.5(c) (1).)

CAAP Sustainable Freight Action Plan Requires Collaboration and Improving California Freight System Competitiveness – The Successful CAAP Collaborative Approach

A voluntary approach to emissions reductions reflected in the San Pedro Bay Ports Clean Air Action Plan (CAAP) 2017 has been proven to work to minimize emissions and adverse community health impacts. The Ports successfully met all past CAAP emission reduction targets both in the original 2006 CAAP and the 2010 CAAP Update. The Ports have a strong track record of CAAP achievement as evidenced in their 2020 Emissions Inventories: Diesel Particulate Matter ("DPM") reduced by 89%, NOx reduced by 64%, and SOx reduced by 98%. The CAAP voluntary approach has achieved more than 10 years of successful emission reductions as a result of extraordinary cooperation and collaboration between and among the Ports, the maritime industry, and the air agencies (EPA, ARB, and SCAQMD). Any pivot to SCAQMD rulemaking affecting the Port facilities will have a chilling effect on the ongoing cooperative voluntary activities, put the CAAP's success in peril, and result in counterproductive challenges and delays.

The Ports' strategy in their 2017 CAAP Update is aligned with the California State Sustainable Freight Action Plan (SSFAP).⁵ The SSFAP directed the State agencies to work with the public, industry, and stakeholders in collaboration to establish a sustainable freight system in California, with goals to improve freight efficiency, transition to zero emission technologies, and increase the jobs and competitiveness of

⁵ <https://cleanairactionplan.org/documents/final-2017-clean-air-action-plan-update.pdf/>

California's freight transport system. The Ports' obligations to execute their legal mandates require them to manage the Ports' business utilizing a balance of their goals including promotion of maritime commerce, environmental conditions and security of their properties and facilities - making the SSFAP particularly relevant as the Ports' guiding principle in the CAAP Update and the CTF Rate decision.

The 2017 CAAP Update also outlined strategies to reduce pollution from on-road drayage trucks through updates to each Port's Clean Trucks Program. The 2022 \$10/TEU rate that went into effect in April 2022 is based upon a balanced approach to achieving the Ports' objectives of reducing emissions for reducing impacts to community health and to meet their criteria pollutant and greenhouse gas reduction goals, while minimizing unintended consequences related to economic impacts and disruption to the industry.

A Port ISR may compromise the ability of the Ports to obtain CAAP-related grant funding from governmental sources.

The Ports' CAAP voluntary approach has been successful in part due to grant funding available from governmental sources. Such funding is not available for "compliance with regulation" activities. If successful voluntary activities at Port facilities are replaced by a Port ISR regulatory approach requiring specific Port actions and results, such governmental sources of funding such Port actions will become unavailable. Thus, the Port ISR regulatory approach could in fact be counterproductive to the efforts to minimize emissions and achieve community health benefits of the CAAP voluntary approach.

Conclusion

The Ports submit that Staff's recommendation to adopt an ISR regulating Port facilities is ill-advised for all of the above reasons. The Ports have expressed these concerns and raised similar questions to the air agencies for several years, but neither CARB nor SCAQMD has provided meaningful responses. The Ports, therefore, request that SCAQMD reject imposition of an ISR on the Ports or their facilities. SCAQMD should continue to urge FPA to regulate federal emissions sources. SCAQMD and CARR should continue to rely on CARB's mobile source authority, to support the Ports by directing staff to increase efforts to secure funding for zero and near zero truck technology and infrastructure, and to maintain the success of the voluntary and collaborative CAAP.