



February 20, 2025

Hon. Vanessa Delgado, Chair
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765-4178
Delivered via e-mail

**Re: Update on Facility-Based Mobile Source Measure Development for Marine Ports
(Item #22) February 7, 2025 Governing Board Meeting**

Dear Chair Delgado,

On behalf of the members of the Pacific Merchant Shipping Association (PMSA), representing ocean carriers, marine terminals, and other maritime industry interests operating on the US West Coast, I write to address several of the comments by SCAQMD (District) Staff and Governing Board members during the Staff Update at the meeting on Friday, February 7th regarding work related to emissions at the Ports of Los Angeles and Long Beach.

We would like to specifically say “thank you” to you and most of the members of the Governing Board for your leadership in facilitating this “infrastructure first” approach. If implemented through a collaborative agreement approach, rather than via a rulemaking measure, PMSA stands ready to support the District in this path forward as it represents the most reasonable, feasible, and practical way to even further reduce emissions in Southern California than have already been achieved at record levels, at the greatest speed and with the lowest cost.

We agree with, and support, much of the Update provided by District Staff. We agree that this process requires partnership to be successful. As noted by PMSA VP Thomas Jelenic during his testimony at the meeting, our organization is generally in alignment with District Staff on the concept that infrastructure development needs to occur before consideration of any further development of an emissions reduction regulatory framework.

Despite some of the rhetorical flourishes and claims to the contrary from the dais – including a representation that PMSA says “no” to all air quality measures or is somehow opposed to investment in air quality reductions in the South Coast Air Basin – we believe our positions in support of improved air quality and additional investment are patently clear:

PMSA supports a non-regulatory, collaborative approach through the execution of an enforceable agreement between the Air District and the Cities of Los Angeles and Long Beach and their respective Harbor Departments, that will result in the development of infrastructure improvements that are necessary to reach the next generation of air quality improvements at the Ports of Los Angeles and Long Beach.

This is an approach which we have been supportive of, and have actively advocated for, since last spring when you and several of your colleagues expressed that an infrastructure approach should be explored as a potentially more viable approach than a contentious Indirect Source Rule (ISR) and debate on cargo caps. We thank you for your leadership on this effort.

A Collaborative Approach to Clean Air Infrastructure is a Pathway to “Getting to Yes” Solutions

A collaborative approach on infrastructure provides the District with a pathway to a “getting to yes” solution. PMSA’s position on this is also the same as other potential collaboration parties, including the Mayors of the City of Los Angeles and Long Beach and the leadership at the Ports of Los Angeles and Long Beach. Other labor, business, and waterfront stakeholders have also signaled support for a collaborative agreement on infrastructure as an alternative to District rulemaking.

This commitment is consistent with, and cemented by, our industry’s continuous and significant investments in cleaner air in the state of California and around the globe.

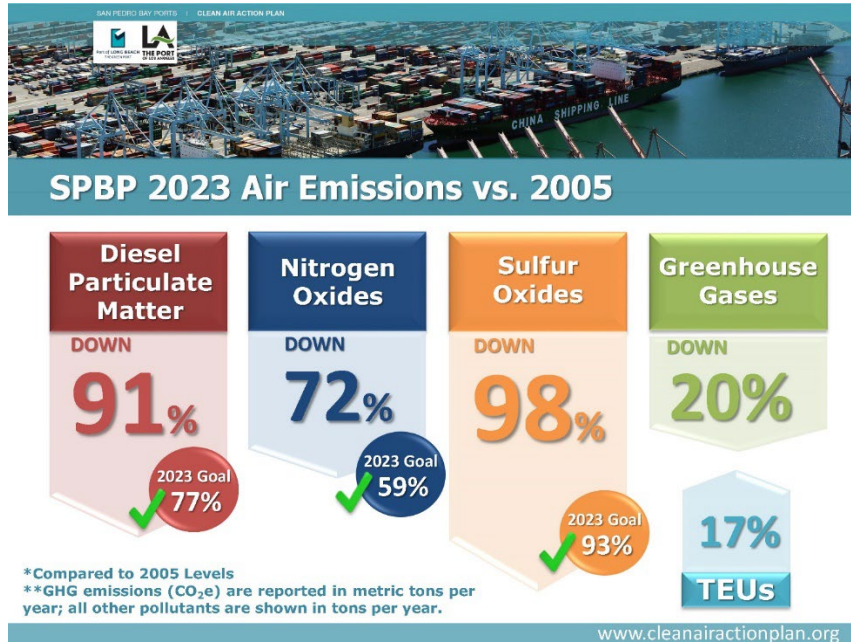
Maritime industry leaders have made a generational, multi-decade commitment of resources to address global problems at an international stage and to reduce local emissions. The significant and unprecedented commitments of these multi-billion-dollar initiatives are the opposite of saying “no” – this is backing our commitment with dollars and results. For example, PMSA members are doing all of the following:

- Committing to a global IMO framework to decarbonize the global cargo fleet to a 2050 Net Zero standard, which has been estimated to cost approximately \$3.4 trillion, including over \$500 billion just for containerships alone
- Investing an estimated \$2 billion in California port, marine terminal, and ocean-going vessel infrastructure since 2008 for at-berth technology. The result, over 90% of all container ships calling at the Ports of LA and Long Beach are plugging-in to shorepower or using an alternative emissions reduction system. More ships plug in to shorepower in San Pedro Bay than at any other port in the world.
- Following the most advanced Cargo Handling Equipment regulation in the country since 2007, implementing a Best Available Control and Retrofit Technology rule ever since.

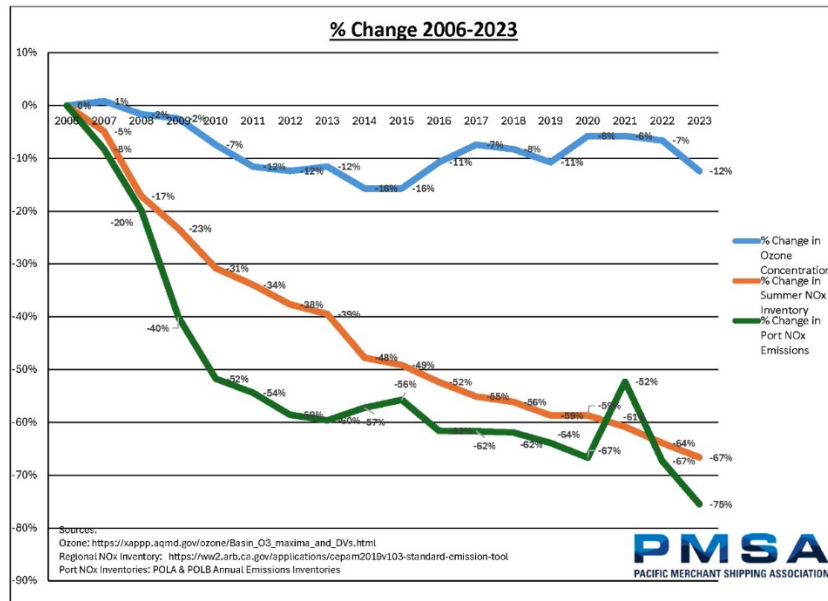
Our industry has also worked collaboratively with the District and with the Ports to apply and advocate for and support the award of hundreds of millions of dollars in federal and state subsidies for clean air projects and infrastructure. These awards are not just subsidies that exist in a vacuum, but rather they in turn result in obligations by the Ports and PMSA-members to provide matching funds, execute the grants, and to extend the benefits beyond our regulatory baseline obligations.

As a result, the cleanest port complex in the Western Hemisphere, if not the world, exists in the San Pedro Bay. This has occurred primarily as a result of the commitment of the waterfront industry resources necessary to fund this transition as a definitive success. Ocean carriers, marine terminal operators, railroads, trucking carriers, harbor craft, and the public seaports working together have found a mix of local commercial arrangements and state, federal, and international regulatory measures that have worked to make these clean air outcomes possible, albeit at considerable expense.

The outcomes are irrefutably significant:

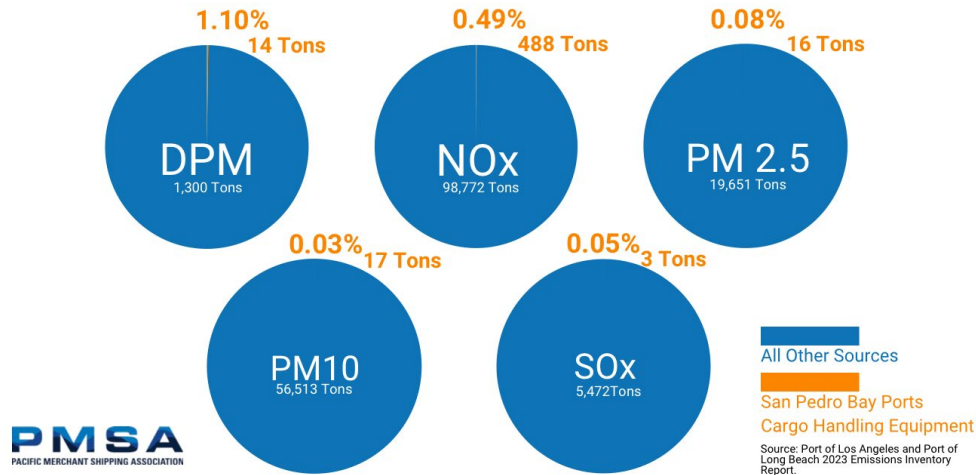


These improvements are also reflected in the fact that declines in seaport emissions have outperformed the average reduction in air emissions since 2006.



In addition, the direct emissions of marine terminal operations, specifically the emissions from Cargo Handling Equipment, contribute a relatively de minimis amount to overall regional NOx and DPM.

Seaport Cargo Handling Equipment Contributions to South Coast Air Basin Emissions (2023)



It is in this context of unprecedented success and investments, locally and globally, and our industry’s ongoing commitments to emissions reductions that PMSA and our members say "Yes" to the creation of a collaborative agreement framework for taking the next steps towards even cleaner air and more emissions reductions in Southern California.

The Threat of Regulations and Punitive Cargo Caps Are Mutually Exclusive with a Collaborative Approach to Infrastructure Development

We believe that all of the principal parties agree that a clear commitment to infrastructure which will meet the collective goals of achieving a zero-emission future is appropriate prior to addressing a phase where regulatory action is contemplated. We were pleased to continue to hear this at the February 7th Board meeting - clearly and unequivocally.

However, we also heard just as clearly and unequivocally the voices of members of the Governing Board and the public who continue to advocate for and support the imposition of punitive, illegal, and unnecessary cargo caps and emissions caps. This includes a concept whereby the infrastructure approach would sit as the “first phase” of a regulatory approach to emissions reductions.

A regulatory approach, even if phase one is focused on infrastructure, confirms for us that the ultimate intent of the District is to regulate our operations. By contrast, a collaborative approach that is focused on infrastructure neither endorses nor prejudices against any future regulatory steps.

We have no choice but to view any phased rulemaking approach as a rejection of a collaborative path forward.

Therefore, the choice facing the District at this juncture is straightforward. The District will either:

- propose a collaborative approach to the development of zero-emissions infrastructure, or
- propose a regulatory approach in phases, such that the development of zero-emissions infrastructure is phase one, and a long-term intention to impose emissions caps, cargo caps, or other operational constraints on the Ports and marine terminals is phase two.

We cannot, and do not, prejudge a proposal that has not yet been made, but the pathway that is proposed for the February 28th workshop will necessarily be one or the other of these mutually exclusive options. It cannot be neither and it cannot be both.

The statements made by the Mayors of Los Angeles and Long Beach, and the Ports of Los Angeles and Long Beach, affirm that they are prepared to work on the development of this infrastructure in a collaborative approach. PMSA likewise respectfully requests that the District move forward with a collaborative and non-regulatory approach to infrastructure development and avoid the threat of the imposition of Port and marine terminal operational controls that is endemic to a rule-based approach, and which would ultimately facilitate the adoption of emissions caps and cargo caps.

Respecting Regulatory Boundaries and Preemption is Highly Relevant to the Maritime Industry

In order to protect both our members' existing investments and our industry's multi-year international commitments to investing billions of dollars in cleaner air and an improved environment, we will continue to raise our legitimate and ongoing concerns with the lawful scope of this local Air District's regulatory authority and with the proposed imposition of any regulation.

At the February 7th Board meeting the District Staff disclaimed the importance of pursuing any one specific pathway – either regulatory or voluntary. As Executive Officer Nastri stated in response to the issue of whether the District should adopt a collaborative approach or a regulatory approach, he believed that the question regarding the methodology chosen is "irrelevant."

We are pleased to hear that the District is fully disinterested in the form of action taken and is focused on the substantive outcomes of infrastructure development. We thank Mr. Nastri for his candor and honesty in this regard and for being open to a collaborative approach. Further, if the District Staff is truly agnostic on this question, we applaud such a stance and hope that it leads to a quick resolution of this matter by pivoting away from a regulatory action and instead leads to a quick embrace of a voluntary agreement framework.

This is important because, while it may be of little difference to the District, it is highly relevant to industry what form, legal authority, and regulatory actions are taken by local and regional governments under the Clean Air Act and state law. We operate in a global industrial framework.

One of the paramount maxims of the maritime industry is to try and ensure uniformity across as many jurisdictional boundaries as possible, in order to avoid a patchwork quilt of regulations.

The bases for these are universally understood and do not need much in the way of explanation but suffice to say that multi-lateral trade and the navigation of vessels in support of this trade is complex and even the slightest changes in the rules which control it can create massive non-tariff-based barriers to trade. These controls can also result in closing ports and harbors to beneficial trade for the national economy.

The District has no land use authority over the Cities of Los Angeles and Long Beach. These cities have plenary control subject only to the limits imposed by state law and federal law with respect to the exercise of their police powers to control local land use. These have not been ceded to the District. If the cities in this instance were to surrender to the regulatory authority of the District the capacity to compel by law, as opposed to agreement, where, how, and to what degree infrastructure is to be approved or disapproved in their jurisdiction it would be exceptionally hard for these Cities to subsequently argue that the Air District could not revise the terms of the operations of such infrastructure for lack of legal authority. It would be the proverbial camel's nose under the tent into local land use control. The same holds true for local utility management and regulation.

Further still, as a practical matter, any proposed regulation would also impose unacceptable legal jeopardy on public ports and private marine terminals, as well as eliminate the opportunity for our industry to further participate in state and federal grant and subsidy programs. If the District is intending to adopt a phased regulatory approach whereby the rule is adopted and incorporated into the State Implementation Plan, it would encourage "bounty hunter" lawsuits against the cities of Los Angeles and Long Beach, utilities, and the public agencies responsible for this infrastructure. Not only will this ultimately increase the costs of these projects, but these suits will both delay the timeline for development of infrastructure and divert valuable and limited resources from the entities that must install the very zero-emission infrastructure necessary to reduce emissions.

Finally, with respect to questions of preemption, we note that in the February 7th meeting several comments were made with respect to the presumption that the District has solid legal standing to defend any Indirect Source Rule. This raises several questions.

First, if the intention of a phased regulatory approach is indeed to not impose an indirect source rule control measure on the ports and terminals, then why would the District be acting on the basis of its indirect source rule authority? If the District does intend to move forward with a phased rule, and if this is the preferred method proposed at the February 28th workshop, it would be of critical importance to know under what theories of state and federal authority it is proceeding. We are at a loss to imagine how any indirect sources are being regulated by the consideration of an infrastructure plan. Barring such authority, the basis for such a regulatory planning tool to be imposed on sister public agencies and/or private sector owners of mobile source equipment would need to be plainly stated and described.

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Second, we would remind the Board that the District does not have a monopoly on interpretations of preemption under the Clean Air Act or other relevant federal constitutional and statutory law. In fact, the last time that the SCAQMD and PMSA disagreed over an interpretation of the Clean Air Act and the federal judiciary was invited to resolve the question of the preemptive effect of federal law, the 9th circuit agreed with PMSA. [*Pacific Merchant Shipping Association v. Goldstene*, 517 F.3d 1108 \(9th Cir., 2008\)](#), (South Coast AQMD, Defendant-Intervenor). The rulings of other courts with respect to the construction of a building in the San Joaquin AQMD or the construction and operation of a warehouse in the Inland Empire do not contemplate the regulation of the operations of a modern commercial seaport. They don't implicate the questions of potential regulation of vessels in interstate and foreign commerce, nor do they concern questions that are imprinted with unique Constitutional protections should the District attempt to impose ultimate emissions caps or cargo caps – as has been continuously advocated, including from the Governing Board dais at the February 7th meeting.

Again, we would respectfully implore the District to avoid treading down a path where all of the parties feel the need to spend precious time and energy and resources on our lawyers and litigation teams than on the infrastructure necessary to prepare Southern California for a future with cleaner air.

Please do not hesitate to contact me directly, or my colleague Vice President Thomas Jelenic, at any time regarding this or any other matters.

Sincerely,



Mike Jacob
President

cc: Members, Governing Board, South Coast Air Quality Management District
Mr. Wayne Nastri, Executive Director, South Coast Air Quality Management District
Hon. Karen Bass, Mayor, City of Los Angeles
Hon. Rex Richardson, Mayor, City of Long Beach
Mr. Mario Cordero, Executive Director, Port of Long Beach
Mr. Gene Seroka, Executive Director, Port of Los Angeles