



NATURAL RESOURCES DEFENSE COUNCIL



**WEST OAKLAND
ENVIRONMENTAL
INDICATOR
PROJECT**



**SAN PEDRO AND PENINSULA
HOMEOWNER'S COALITION**

**FRESNO
METROPOLITAN
MINISTRY**

**COALITION FOR A
SAFE ENVIRONMENT**

April 14, 2006

Via Email, USPS and Facsimile

Chairman Sawyer and Members of the Board
California Air Resources Board
1001 I Street
Sacramento, CA 95814

**Re: April 20 hearing, Item # 06-4-3—Emission Reduction Plan for Ports
and Goods Movement in California**

Dear Chairman Sawyer and members of the Board,

We write on behalf of the Natural Resources Defense Council, Coalition for Clean Air American Lung Association of California, Pacific Institute, West Oakland Environmental Indicator Project, Fresno Metropolitan Ministry, Environmental Health Coalition, Coalition for a Safe Environment, San Pedro & Peninsula Homeowners Coalition and our more than 250,000 California members in strong support of the work ARB staff has done thus far on the Draft Emission Reduction Plan for Ports and Goods Movement in California ("ERP"). *We also write, however, to urge the Board to give staff clear direction at the April 20 hearing to make the plan as strong, mandatory, and aggressive as possible, as we outline below, and to move forward with implementing the plan as quickly as possible.*

Specifically, as discussed further below, we ask the Board to:

- I. Endorse the environmental and health-protective goals of the ERP and
- II. Direct ARB staff to:
 1. Develop an aggressive plan to implement the measures identified in the draft ERP through specific, mandatory rules.
 2. Not to develop MOUs, trading programs, or other industry-proposed alternatives to mandatory rules, given the severity of the health crisis related to goods movement.
 3. Set forth a specific schedule for development, adoption and implementation of each measure and prioritize those rules to be developed in the short term, as listed below.
 4. Where rules are truly impractical, seek to implement alternative actions through container fees that properly place the cost of mitigation on polluters, not California residents.
 5. Develop a plan to ensure environmental justice and reductions in local risk.

Finalizing and implementing a strong and aggressive ERP for goods movement is the *most important step* this Board can take to help ensure that regions throughout California attain state and federal clean air standards on time and that Californians breathe clean and healthy air.

According to ARB staff, "The contribution of goods movement emissions to statewide total NOx and diesel PM emissions is larger than all stationary sources, and larger than both passenger vehicles and off-road equipment [i.e., goods movement is *currently* responsible for roughly 30 percent of NOx emissions and 75 percent of diesel PM emissions in California]." ERP at 14. As a result, goods movement takes a major toll on human health in our local communities throughout the state. According to the draft ERP, this polluting industry takes at least 2,400 lives per year (ARB staff believes this estimate may be considerably higher as discussed below), causes almost 3,000 yearly hospital admissions and over one million school absence days annually, at a total health cost to California residents of \$200 billion over the next 15 years. ERP at 4, ES-3. Despite the growing environmental and human health toll, this industry has long remained uncontrolled, and the industry itself has done very little voluntarily to clean up the pollution it creates and imposes on California's communities.

As the ERP makes clear, goods movement is predicted to become an exponentially larger part of the air pollution problem in the next 15 years, as the system expands. Indeed, ARB staff was asked to create the ERP as an integral part of the Schwarzenegger Administration's proposed Goods Movement Action Plan ("GMAP"), which, in turn, seeks to expand the already overly-polluting goods movement system to allow for a desired *tripling or quadrupling* of goods movement through this state by 2020. If this occurs, "goods movement activities are predicted to be the largest source of diesel PM in

California, *larger than all other sources combined*” by that date. ERP at 14 (emphasis added).

A comprehensive plan to clean up goods movement and protect California’s communities therefore is long overdue, and we applaud ARB’s initial efforts to create such a plan. The draft plan needs to be strengthened, however, by adding specific implementation dates, schedules and methods of implementation, as discussed below. *Accordingly, we ask that the Board direct staff to take the actions identified below to ensure that the ERP delivers the health protections Californians have been promised and so desperately need on a timely basis.*

I. WE URGE THE BOARD TO ENDORSE THE GOALS OF THE ERP

The ERP is designed to achieve and maintain four critical clean air goals: (1) reduce current pollution levels to 2001 levels by 2010; (2) reduce diesel PM by 85% by 2020; (3) reach attainment with clean air standards on time and (4) ensure sufficient localized risk reduction in each affected community. ERP at ES-1. While we believe that more stringent short- and mid-term goals are needed, *we urge the Board to endorse these as the minimum goals that must be met by the ERP for the following reasons.* First, these are the same goals that were set forth by Cal/EPA and the Business, Transportation and Housing Agency in Phase I of the GMAP and, therefore, have already been promised to California residents. Second, they are entirely consistent with longstanding ARB goals (i.e., 85% PM reductions by 2020 and ARB’s environmental justice policies), goals of individual port complexes (i.e., 2001 levels by 2010) and federal law (i.e., attainment with federal clean air standards). Finally, each one of these goals has a critical purpose, including ensuring short-term and long-term health benefits, compliance with federal law, and achievement of environmental justice in disproportionately impacted communities.

In addition, however, we urge the Board to direct staff to develop additional interim, or milestone, goals to ensure short- and mid-term improvements. Currently, most of the goals pertain to years in 2020 and beyond—far too long to ensure a reduction in the current level of unacceptable health risks. Finally, as discussed below, it is imperative that the Board direct staff to develop and implement specific goals and strategies to achieve sufficient localized risk reduction in each affected community.

II. WE URGE THE BOARD TO DIRECT STAFF TO DEVELOP A STRONG AND AGGRESSIVE ERP

Given the dire and immediate need to reduce pollution and health impacts from goods movement, we urge the Board to direct staff to move forward with the ERP and to take the following actions:

1. Develop an aggressive plan to implement the measures identified in the draft ERP through specific, mandatory rules.

In the current draft of the ERP, staff has outlined a list of *potential* measures to control pollution from goods movement activities and achieve the four clean air goals. Staff makes clear, however, that *every one of the measures listed* must be *fully* implemented in order to achieve these goals on time. See, e.g., ERP at 54 (noting that estimated emission reductions assume measures are “fully implemented”). We understand that ARB staff is planning to develop more specific measures and timeframes as part of the SIP process, but we believe that such specificity must be developed considerably sooner in order to (1) more quickly address the current health impacts of goods movement; (2) steer the Administration in the GMAP process; and (3) better focus staff resources on this important issue.

The key point to keep in mind is that the GMAP will be finalized by the Administration by June of this year, and the infrastructure expansion projects will begin to move forward at that time. Unlike the current draft of the ERP, that plan will include a precise listing of the freeways and railways to be expanded, as well as the specific timeframes in which they are slated for completion. The Administration has promised that air quality and public health will be improved on a “simultaneous and continuous” basis with infrastructure expansion. The only way we can be sure to achieve that goal is if the ERP has equal specificity, in terms of the measures to be taken, the timeline for adoption and implementation of those measures, and a plan for implementation.

More importantly, since every measure must be fully implemented to achieve the stated goals, ARB must act in the most effective manner possible, which we believe is through mandatory rules. *Accordingly, we ask the Board to direct staff to provide a specific implementation mechanism and schedule for each measure identified in the ERP in the same manner (and to the same degree) that control measures are specified in a SIP. This means that the measures should be mandatory and take the form of required rules with backstop provisions. We also urge the Board to direct staff to use ARB’s regulatory authority to the greatest possible extent.*

We note that there have been some questions raised by opponents of the ERP regarding the legality of certain ARB actions related to ports and goods movement. As we have told ARB staff, NRDC attorneys believe that ARB has the legal ability to impose mandatory actions in this area under a variety of legal theories, including the fact that the State of California owns port lands and thus may act as landlords under the established “market participant” exception to preemption. We would be happy to brief the Board on this area of the law.

- 2. Do not develop MOUs, trading programs, or other industry-proposed alternatives to mandatory rules, given the severity of the health crisis related to goods movement.**

We are particularly concerned that staff has identified MOUs and trading programs as possible methods of implementation—instead of mandatory rules. Both of these methods, however, would result in less than full implementation of the necessary measures that ARB has identified as critical to achieving the stated clean air goals. MOUs lack enforcement mechanisms and public accountability and have consistently proven inferior to mandatory rules. They also tend to produce weaker emission reductions and outcomes; we believe that ARB should always, therefore, focus first on mandatory rules to the maximum extent of its authority.

Trading programs, like the one outlined by industry groups, often result in a “pay to pollute” system and a trade-off between many available feasible measures. This would result in less than “full implementation” of necessary measures and a failure to achieve the clean air goals. We oppose the proposed trading program for many other reasons. NRDC and the Coalition for Clean Air have outlined more specific criticisms of the proposed trading proposal in the enclosed attachment. Importantly, the proposed trading program would (1) allow for the trading of toxic PM, leading to significant health and environmental justice issues, and (2) explicitly preclude the ability of local action by disallowing ports to negotiate for additional clean air measures through their leases and communities to fight for additional mitigation of projects through the CEQA process. This alone would undermine California’s ability to achieve the stated clean air goals. As ARB staff notes many times in the draft ERP: “Successful implementation of the ARB emission reduction plan will depend upon actions at all levels of government ... No single entity can solve this problem in isolation.” ERP at ES-1.

For these reasons, we urge the Board to direct ARB staff NOT to forgo mandatory compliance with rules in favor of a less effective MOU or trading proposal.

- 3. Set forth a specific schedule for development, adoption and implementation of each measure and prioritize those rules to be developed in the short term, as listed below.**

Just as ARB staff must identify the method of implementation for each measure now, in order to ensure that the clean air goals are met, they must also set forth a specific schedule for development, adoption and implementation of each measure. An excellent example of this can be found by reference to the No Net Increase Report for the Port of Los Angeles released on June 24, 2005. We enclose a matrix of the measures in that plan and the timeframe developed for those measures by the NNI task force with this letter; we have submitted this matrix to ARB staff as well.

In addition, as ARB staff makes clear, time is of the essence when it comes to reducing impacts from ports and goods movement: “emission reductions from all sectors are

needed to reduce existing health impacts in communities *as quickly as possible* and to meet air quality standards by federal deadlines.” ERP at 37. *We therefore ask the Board to direct staff to prioritize those measures that will result in the greatest emission reductions and to move forward with development of those rules in the short term.* The measures that we believe should take priority include the following:

Shore Based Electrical Power (Cold Ironing). Though ARB staff describes this as a “near-term approach that...dramatically reduces vessel hotelling emissions” and that can “be accomplished via regulation” (ERP at 49), the draft plan does not commit to a specific timeline for development of such a rule. Staff has already done the work of evaluating both the feasibility and cost-effectiveness of cold-ironing in a draft study and has concluded that the technology is, in fact, feasible and largely cost-effective. As the ERP details, this technology is also being used in a variety of applications, including in commercial container vessels at the Port of Los Angeles’s China Shipping terminal. ERP at 49-50. This measure deserves top priority consideration and should be one of the first rules developed by ARB staff.

Cleaner Marine Fuels For Ship Main Engines. Ships are one of the primary sources of pollution in the goods movement system. In particular, in the draft ERP, ARB staff has identified a critical issue regarding the considerable SOx emissions from ships and the tie between such emissions and the formation of toxic PM. ERP at 5. Moreover, ships run on the dirtiest fuel available, known as “bunker fuel”, which has an average sulfur content of 27,000 ppm. And, as you know, ARB has already begun to regulate in this area, with your adoption of groundbreaking clean fuel rules for auxiliary engines in December of 2005. Accordingly, there is no reason to delay this critical measure.

Truck replacement. As the draft ERP makes clear, truck emissions are by far the largest source of pollution in the goods movement system. ERP at 16. Further, ARB staff’s proposed truck strategy “focuses on upgrading the heavy duty diesel truck fleets that service the ports and move goods within California primarily by retrofitting or replacing the older, dirtier trucks.” ERP at 79. The reason for this is clear: for a variety of reasons, some of the oldest trucks service the ports and the goods movement sector. Accordingly, it is crucial that this measure be developed and implemented immediately.

Replacement of Old Switching Locomotives. Similar to port terminals, railyards can pose significant health risks to surrounding communities as documented by ARB’s recent health risk assessment of the Roseville railyard. While switching locomotives do not account for the majority of pollution from locomotives, they tend to be very old, highly polluting and concentrated at railyards. The draft ERP identifies two technologies that have already been developed that “can reduce current PM and NOx emissions generated...by up to 80 percent” and achieve significant reduction by 2010. ERP at 99. Accordingly, this too is an effective measure that should be developed in the short term.

Support for Rules Currently Under Development. Several key rules impacting goods movement are currently under development. The Harbor Craft rule has been under development for almost two years. We support the completion of this rule as swiftly as possible. The On-road Private Fleet rule for trucks has just recently begun development. We look forward to working closely with staff to develop as strong a rule as feasible.

4. **Where rules are truly impractical, seek to implement such actions through container fees that properly place the cost of mitigation on polluters, not California residents.**

There are a few measures for which it may be impractical for ARB to mandate clean up actions or to put the cost of enforcement on those who must comply. The clearest example of such an action is a truck replacement program for single owner-operator trucks typically serving ports. While trucks are the largest source of pollution in the goods movement system, largely because they are some of the oldest on the road, truck drivers are the lowest paid. Accordingly, it would be unconscionable to adopt a regulation requiring truck drivers to scrap their older trucks and replace them with newer models at their own expense, without first providing ample time and access to incentive funding. ARB staff recognizes that such a program would have to "be heavily supported by incentive dollars." Nevertheless, staff does not specify where such funds would come from. It is imperative that ARB identify a certain stream of funds for this program, as it is a critical part of the ERP strategy.

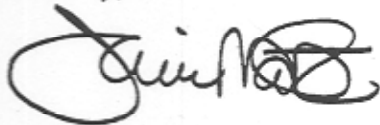
Currently, it appears that staff is relying largely on bond funds to finance this measure. The fate of any bond, however, is highly uncertain at this point. In addition, it is more fair to set up a system where the polluter pays the price of clean air measures. In this regard, *we urge ARB to support the imposition of container fees to finance incentive and other clean air measures.* Container fees would place the cost of achieving clean air squarely on those responsible for creating the current health crisis. Moreover, container fees make sense since there is a direct correlation between the amount of cargo handled and pollution generated, and the amount of money paid towards mitigation.

5. **Develop a plan to ensure reductions in local risk and achieve environmental justice.**

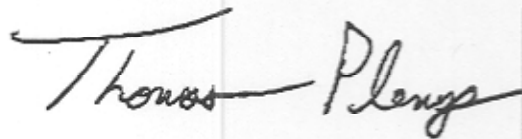
The current draft of the ERP has as a goal to ensure sufficient localized risk reduction in each affected community. We are completely supportive of this critical goal. Nevertheless, nowhere in the plan does ARB staff state how this will be accomplished. Given that ports and other goods movement facilities are a major source of localized health impacts, it is imperative that a plan to achieve this goal be developed and adopted along with the rest of the ERP. *We urge the Board to direct staff to develop a plan to ensure reductions in local risk in each affected community.*

Thank you for your consideration of these comments and recommendations. In addition, we attach a short letter, which discusses more technical issues we have with the ERP and references an earlier letter we submitted to ARB staff. We look forward to working with ARB staff to ensure that the ERP is as strong and aggressive as possible.

Sincerely,



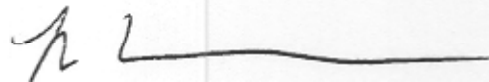
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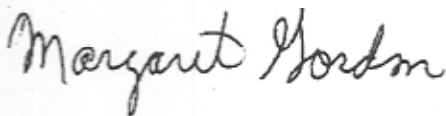
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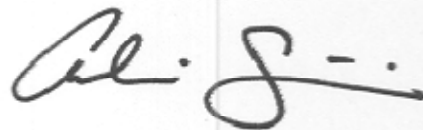
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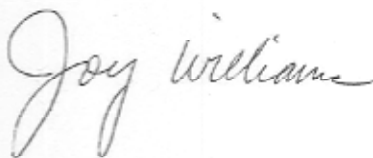
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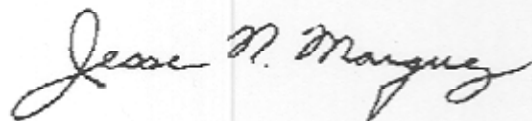
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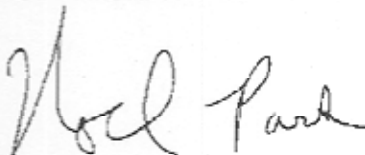
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Enclosures