

January 29, 2020

Jason Cashman  
Environmental and Regulatory Affairs Manager  
Port of Stockton  
2201 West Washington Street  
Stockton, California 95203

Dear Jason Cashman:

Thank you for providing the California Air Resources Board (CARB) with the opportunity to comment on the NuStar Marine Oil Terminal Engineering and Maintenance Standards (MOTEMS) Development and Vessel Service Project (Project) Draft Environmental Impact Report (DEIR), State Clearinghouse No. 2019060229. The Project involves upgrading the Port of Stockton's Dock 10/11 to MOTEMS to support a new vessel service for renewable diesel imports. The Project consists of installing approximately 3,400 feet of underground 12-inch piping from the dock to its existing terminal. If approved, the number of vessels calling to Dock 10/11 would increase from zero to 12 per year, and annual truck trips would increase from 17,011 to 21,249. The Project is located in the City of Stockton, California, and the Port of Stockton (Port) is the lead agency for California Environmental Quality Act (CEQA) purposes.

Freight facilities, such as ports, can result in high volumes of rail, heavy-duty diesel truck and marine vessel traffic and operation of on-site equipment (e.g., forklifts, yard tractors, etc.) that emit toxic diesel emissions, and contribute to regional air pollution and global climate change. CARB staff has reviewed the DEIR and is concerned about the air pollution impacts that would result should the Port approve the Project.

#### **I. The Project Would Increase Exposure to Air Pollution in Disadvantaged Communities**

The Project, if approved, will expose nearby disadvantaged communities to elevated air pollution. Addressing the disproportionate impacts that air pollution has on disadvantaged communities is a pressing concern across the State, as evidenced by statutory requirements compelling California's public agencies to target these communities for clean air investment, pollution mitigation, and environmental regulation. The following three pieces of legislation need to be considered and included in the DEIR when developing a project like this in the Stockton community.

Senate Bill 535 (De León, 2012)

Senate Bill 535 (De León, Chapter 830, 2012)<sup>1</sup> recognizes the potential vulnerability of low-income and disadvantaged communities to poor air quality and requires funds to be spent to benefit disadvantaged communities. The California Environmental Protection Agency (CalEPA) is charged with the duty to identify disadvantaged communities. CalEPA bases its identification of these communities on geographic, socioeconomic, public health, and environmental hazard criteria (Health and Safety Code, section 39711, subsection (a)). In this capacity, CalEPA currently defines a disadvantaged community, from an environmental hazard and socioeconomic standpoint, as a community that scores within the top 25 percent of the census tracts, as analyzed by the California Communities Environmental Health Screening Tool Version 3.0 (CalEnviroScreen).<sup>2</sup> According to CalEnviroScreen, Stockton communities near the Project score within the top 1 percent of California census tracts; therefore, CARB urges the Port to ensure that the Project does not adversely impact neighboring disadvantaged communities.

Senate Bill 1000 (Leyva, 2016)

Senate Bill 1000 (SB 1000) (Leyva, Chapter 587, Statutes of 2016)<sup>3</sup> amended Planning and Zoning Law. SB 1000 requires local governments that have identified disadvantaged communities to incorporate the addition of an environmental justice element into their general plans upon the adoption or next revision of two or more elements concurrently on or after January 1, 2018. SB 1000 requires environmental justice elements to identify objectives and policies to reduce unique or compounded health risks in disadvantaged communities. Generally, environmental justice elements will include policies to reduce the community's exposure to pollution through air quality improvement. SB 1000 affirms the need to integrate environmental justice principles into the planning process to prioritize improvements and programs that address the needs of disadvantaged communities, such as the Stockton communities that surround the Project site. Since the City of Stockton (City) has not yet adopted an environmental justice element, it is imperative that the Port consult with the City to determine how it can best integrate air quality elements into its Project that reduce local disadvantaged communities' exposure to the Project's pollutants. This will ensure that the Port is acting in a manner consistent with the City's efforts in developing policies for its environmental justice element.

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<sup>1</sup> Senate Bill 535, De León, K., Chapter 800, Statutes of 2012, modified the California Health and Safety Code, adding § 39711, § 39713, § 39715, § 39721 and § 39723.

<sup>2</sup> "CalEnviroScreen 3.0." Oehha.ca.gov, California Office of Environmental Health Hazard Assessment, June 2018, <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>.

<sup>3</sup> Senate Bill 1000, Leyva, S., Chapter 587, Statutes of 2016, amended the California Health and Safety Code, § 65302.

Assembly Bill 617 (Garcia, 2017)

The State of California has emphasized protecting local communities from the harmful effects of air pollution through the passage of Assembly Bill 617 (AB 617) (Garcia, Chapter 136, Statutes of 2017).<sup>4</sup> AB 617 requires new community-focused and community-driven actions to reduce air pollution and improve public health in communities that experience disproportionate burdens from exposure to air pollutants. In response to AB 617, CARB established the Community Air Protection Program with the goal of reducing exposure in communities heavily impacted by air pollution. This Project falls within the boundaries of the Southwest Stockton community, which is one of three statewide communities chosen for inclusion in the second year of the Community Air Protection Program.

Southwest Stockton was selected for both community air monitoring and the development of an emissions reduction program due to its high cumulative exposure burden, the presence of a significant number of sensitive populations (children, elderly, and individuals with pre-existing conditions), and the socioeconomic challenges experienced by its residents. The average overall CalEnviroScreen score for the Southwest Stockton community is in the top 1 percent, indicating that the area is home to some of the most vulnerable neighborhoods in the State. The air pollution levels in Southwest Stockton routinely exceed State and federal air quality standards. Additionally, the community was prioritized by the San Joaquin Valley's AB 617 Environmental Justice Steering Committee.<sup>5</sup>

Health-harming emissions, including particulate matter, toxic air contaminants, and diesel emissions generated during the construction and operation of the Project may negatively impact the community, which is already disproportionately impacted by air pollution from existing freight facilities and other stationary sources of air pollution. Part of the AB 617 process requires CARB and the San Joaquin Valley Air Pollution Control District (SJVAPCD) to create a highly-resolved inventory of air pollution sources within this community. CARB will be more than happy to share this community emissions inventory with the Port of Stockton to aid in the EIR process.

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<sup>4</sup> Assembly Bill 617, Garcia, C., Chapter 136, Statutes of 2017, modified the California Health and Safety Code, amending § 40920.6, § 42400, and § 42402, and adding § 39607.1, § 40920.8, § 42411, § 42705.5, and § 44391.2.

<sup>5</sup> California Air Resources Board (2018). 2018 Community Recommendations Staff Report. Sacramento, California: Community Air Protection Program. <https://ww2.arb.ca.gov/resources/documents/2018-community-recommendations-staff-report>.

## **II. The DEIR Does Not Adequately Analyze the Project's Potential Health Risk Impacts**

The DEIR did not conduct a health risk assessment (HRA), or any other qualitative analysis to evaluate the Project's potential impact on public health. The DEIR concluded that the Project would expose nearby sensitive populations to substantial pollutant concentrations that would result in a less than significant impact. This conclusion was reached by comparing the Project's operational particulate matter 2.5 micrograms in diameter (PM<sub>2.5</sub>) emission rate to the South Coast Air Quality Management District's (SCAQMD) significance threshold. Although the DEIR concludes that the Project's air pollutant emission rates are below the SCAQMD significance threshold for PM<sub>2.5</sub>, the DEIR must, at a minimum, include some quantitative analysis in determining the severity of the Project's impact on public health.<sup>6</sup>

Since the Project is located near residences already disproportionately burdened by multiple sources of air pollution, CARB staff strongly urges the applicant and Port to prepare an HRA for the Project. In doing so, the Port must make a reasonable effort to discuss the specifics between the general health effects associated with a particular pollutant and the estimated amount of that pollutant the Project will likely produce. The HRA prepared in support of the Project should be based on the latest Office of Environmental Health Hazard Assessment (OEHHA) guidance (2015 Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments).<sup>7</sup>

## **III. The Applicant and Port Must Do More to Reduce the Project's Cumulatively Significant Impact on Air Quality and Public Health**

Section 4.2.2 (Cumulative Impact for Affected Environmental Resource Areas) of the DEIR concluded that the Project's air pollutant emissions and cancer risks, when combined with other projects within the Port, would result in a cumulatively significant impact. This impact conclusion was reached by comparing the Project's operational air pollutant emissions and health risks to those reported for the Eco-Energy Liquid Bulk Receiving Terminal Development Project, NuStar Ethanol Infrastructure Upgrades Project, and NuStar Domestic Renewable Diesel Project.<sup>8</sup> The Project's cancer risks were approximated by using scalable numbers from the HRA prepared for the Eco-Energy Liquid Bulk Receiving Terminal Development Project.

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<sup>6</sup> In fact, the California Supreme Court recently addressed this issue in its landmark ruling in *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502 (*Friant Ranch*). In *Friant Ranch*, the Court held that an EIR is inadequate if it does not make "a reasonable effort to discuss relevant specifics regarding the connection between two segments of information already contained in the EIR, the general health effects associated with a particular pollutant and the estimated amount of that pollutant the project will likely produce." (*Id.*, at p. 521.) The current version of the DEIR fails to do this and, as a result, is currently inadequate as a matter of law.

<sup>7</sup> Office of Environmental Health Hazard Assessment (OEHHA). Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments. February, 2015. Accessed at: [https://oehha.ca.gov/media/downloads/crrnr/201\\_Sguidancemanual.pdf](https://oehha.ca.gov/media/downloads/crrnr/201_Sguidancemanual.pdf).

<sup>8</sup> Anchor QEA, 2019. NuStar Marine Oil Terminal Engineering and Maintenance Standards (MOVES) Development and Vessel Service Project Draft Environmental Impact Report. December 2019. Table 25, Table 26, and Table 27.



To reduce the Project's construction and operational air pollutant emissions, the DEIR includes mitigation measures (MM-GHG-1 through MM-GHG-4), which include limiting on-site construction equipment and truck idling duration to two minutes, and encouraging the use of cleaner trucks (defined as model year 2017 or newer). Although these mitigation measures would reduce Project air pollutant emissions, the DEIR concludes that the Project's cumulative impact would remain significant after mitigation.

CARB staff urges the applicant and Port to implement all feasible mitigation measures to reduce the Project's impact on public health. Even where impacts will remain significant and unavoidable after mitigation, CEQA nevertheless requires that all feasible mitigation measures be incorporated (see California Public Resources Code § 21081; 14 CCR § 15126.2(b)). To meet the requirements of CEQA, CARB staff strongly urges the applicant and Port to implement the following emission reduction measures.

1. Include language that requires all off-road diesel-powered equipment used during construction and operation of the Project to be equipped with Tier 4 or cleaner engines, except for specialized equipment in which Tier 4 engines are not available. In place of Tier 4 engines, off-road equipment can incorporate retrofits such that emission reductions achieved equal or exceed that of a Tier 4 engine.
2. Include contractual language in tenant lease agreements that requires tenants to use the cleanest technologies available, and to provide the necessary infrastructure to support zero-emission vehicles and equipment that will be operating on site.
3. Include contractual language in tenant lease agreements that requires future tenants to exclusively use zero-emission light and medium-duty delivery trucks and vans.
4. Include contractual language in tenant lease agreements that requires all service equipment (e.g., yard hostlers, yard equipment, forklifts, and pallet jacks) used within the Project site to be zero-emission. This equipment is widely available.
5. Include contractual language in tenant lease agreements that requires all heavy-duty trucks entering or on the project site to be model year 2014 or later, expedite a transition to zero-emission vehicles, and be fully zero-emission beginning in 2030.

6. Include contractual language in tenant lease agreements that requires the tenant be in and monitor compliance with all current air quality regulations for on-road trucks including CARB's Heavy-Duty (Tractor-Trailer) Greenhouse Gas Regulation,<sup>9</sup> Periodic Smoke Inspection Program (PSIP),<sup>10</sup> and the Statewide Truck and Bus Regulation.<sup>11</sup>

CARB staff urges the Port to install infrastructure at Berth 10/11 to support emissions reductions from tanker vessels. Under CARB's new At Berth Regulation<sup>12</sup>, if a terminal receives 20 or more annual tanker vessel visits, then every tanker visit to that terminal would be subject to the control requirements of the regulation. Because the Port of Stockton is an operating port, Berth 10/11 would be considered a terminal under the requirements of the new At Berth Regulation. Although the Project anticipates a maximum of 12 annual vessel visits, the Port could allow additional vessel visits to Berth 10/11 that were not accounted for in the DEIR. If the total annual tanker vessel visits exceed 19, Berth 10/11 would be subject to the control requirements of the new At Berth Regulation. In addition to the emission reduction measures listed above, CARB urges the applicant and Port to require all tanker vessels visiting Berth 10/11 to be plugged into electrical power or use another CARB-approved emission control strategy to comply with the new At Berth Regulation.

#### IV. Conclusion

CARB is concerned about the Project's potential public health impacts and the lack of mitigation presented in the DEIR. The DEIR does not provide all feasible mitigation measures to reduce the Project's operational air pollution emissions, and does not evaluate the Project's potential health impacts by conducting an HRA. CARB urges the Port to prepare an HRA for the Project and include all of the air pollution emission reduction measures listed above in the Final Environmental Impact Report.

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<sup>9</sup> In December 2008, CARB adopted a regulation to reduce greenhouse gas emissions by improving the fuel efficiency of heavy-duty tractors that pull 53-foot or longer box-type trailers. The regulation applies primarily to owners of 53-foot or longer box-type trailers, including both dry-van and refrigerated-van trailers, and owners of the heavy-duty tractors that pull them on California highways. CARB's Heavy-Duty (Tractor-Trailer) Greenhouse Gas Regulation is available at: <https://www.arb.ca.gov/cc/hdghg/hdghg.htm>.

<sup>10</sup> The PSIP program requires that diesel and bus fleet owners conduct annual smoke opacity inspections of their vehicles and repair those with excessive smoke emissions to ensure compliance. CARB's PSIP program is available at <https://www.arb.ca.gov/enf/hdvp/hdvp.htm>.

<sup>11</sup> The regulation requires newer heavier trucks and buses must meet PM filter requirements beginning January 1, 2012. Lighter and older heavier trucks replaced starting January 1, 2015. By January 1, 2023, nearly all trucks and buses will need to have 2010 model year engines or equivalent. CARB's Statewide Truck and Bus Regulation is available at <https://www.arb.ca.gov/msprog/onrdiesel/onrdiesel.htm>.

<sup>12</sup> In December 2007, the CARB approved the "Airborne Toxic Control Measure for Auxiliary Diesel Engines Operated on Ocean-Going Vessels At-Berth in a California Port" Regulation, commonly referred to as the At Berth Regulation. The purpose of the At Berth Regulation is to reduce emissions from diesel auxiliary engines on container ships, passenger ships, and refrigerated-cargo ships while berthing at a California Port. CARB's At Berth Regulation is available at <https://ww3.arb.ca.gov/ports/shorepower/shorepower.htm>.

Jason Cashman  
January 29, 2020  
Page 7

CARB appreciates the opportunity to comment on the DEIR for the Project and can provide assistance on zero-emission technologies and emission reduction strategies, as needed. If you have questions, please contact Stanley Armstrong, Air Pollution Specialist, at (916) 440-8242 or via email at [stanley.armstrong@arb.ca.gov](mailto:stanley.armstrong@arb.ca.gov).

Sincerely,

A handwritten signature in blue ink that reads "Richard Boyd" with a horizontal line extending to the right.

Richard Boyd, Chief  
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cc: See next page.

Jason Cashman  
January 29, 2020  
Page 8

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