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NATURAL RESOURCES DEFENSE COUNCIL

June 5, 2008

VIA EMAIL AND HAND DELIVERY

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Re: China Shipping Draft EIS/EIR

Dear Dr. MacNeil and Dr. Appy:

Natural Resources Defense Council writes to provide initial comments on the Re-circulated Draft Environmental Impact Statement/Environmental Impact Report Berth 97-109 Container Terminal Project ("DEIS/DEIR"). We appreciate the opportunity to provide these initial comments, and we may supplement them after the June 5, 2008 public hearing. While we are happy to see remarkable improvements in the scope and detail of this EIS/EIR in relation to the 2006 version, we remain concerned about this project for numerous reasons.

I. The Cumulative Impacts Analysis Does Not Meet CEQA Guidelines And Violates The China Shipping Amended Stipulated Judgment.

CEQA requires that an EIR address cumulative impacts "when the project's incremental effect is cumulatively considerable."[1] The DEIS/DEIR concedes the existence of cumulative impacts at the Port of Los Angeles, and that the China Shipping project will make a substantial contribution to these impacts.[2] However,

[1] CEQA Guidelines § 15130; *see also* CEQA Guidelines § 15355.
[2] DEIS/DEIR at Ch. 4..

although there is some discussion of the incremental impact that the China Shipping project will have, there is no discussion of the effects of the recognized cumulative impacts as a whole on human health or the physical environment. Nor is there any discussion of how to mitigate the cumulative impacts of the identified Port projects.

This lack of analysis violates both CEQA and the Amended Stipulated Judgment. CEQA Guideline 15130(b)(4) provides that the following (among others) element is necessary "to an adequate discussion of significant cumulative impacts . . . .(4) A summary of the expected environmental effects to be produced by those projects with specific reference to additional information stating where that information is available . . . ." The policy reason supporting Section 15130(b)(4) is that the decisionmakers need to know, in deciding whether to approve a project, what the expected impacts will be on the ground as a result of all of the projects identified as cumulative impacts. A person living across the fence line from the Port breathes or will be breathing air that is affected by all of these projects, not just by China Shipping or another individual project. At some point, the decisionmakers may decide, for example, that the overall health risks from Port development are just too high, even though the contribution of a single project may be relatively small – and they need the data and analysis to make this call. This is especially true given the conclusions of the recent MATES III study and CARB's updated study of the number of goods movement-related deaths in California each year.[3] But the data required to evaluate this issue is not present in the DEIS/DEIR.

In addition, Section VI(A)(1) of the Amended Stipulated Judgment in the China Shipping case provides in part that the DEIS/DEIR must "(a) evaluate all project-specific *and cumulative impacts* from the China Shipping Project . . ." and "(b) assess mitigation measures to reduce *those impacts*." (Emphasis added). As noted above, the DEIS/DEIR provides some information about the incremental effect of the China Shipping project on the cumulative impacts to be expected, but does not analyze those impacts as a whole or discuss their mitigation. This error violated the Amended Stipulation Judgment.

II. The Port Should Comply With The Clean Air Action Plan And Promulgate San Pedro Bay Standards To Inform The Decision On The DEIS/DEIR.

The Port promised in Section 2.2 of the Clean Air Action Plan ("CAAP") that it and the Port of Long Beach would establish these standards for the San Pedro Bay:

- Reduce public health risk from toxic air contaminants associated with port-related mobile sources to acceptable levels.

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[3] CARB, Methodology for Estimating Premature Deaths Associated with Long-Term Exposures to Fine Airborne Particulate Matter in California Draft Staff Report (May 22, 2008).

- Reduce criteria pollutant emissions to the levels that will assure that port-related sources decrease their "fair share" of regional emissions to enable the South Coast Air Basin to attain state and federal ambient air quality standards.
- Prevent port-related violations of the state and federal ambient air quality standards at air quality monitoring stations at both ports.

As the CAAP states: "[P]rojects that meet the Project Specific Standard associated with health risk must also meet the criteria pollutant emissions reductions associated with their "fair share" of regional emissions, and health risk reductions, as stated in the San Pedro Bay Standard."[4]

In the China Shipping case, the decisionmakers cannot know whether the project specific standards are tough enough precisely because San Pedro Bay Standards have not been adopted by either Port. This is important because the DEIS/DEIR appears to show that public health risk from the China Shipping project has increased and that emissions of the criteria pollutant $PM_{2.5}$ will increase.[5] In addition, the monitoring stations whose data is available on the Ports' Clean Air Action Plan website consistently show that PM 2.5 emissions are well above the federal and California annual average standards.[6] The recent MATES III report from the Southern California Air Quality Control District[7] shows that the areas of highest cancer risk in the District are those immediately adjacent to the Ports – just as they were in the MATES II report.[8] Accordingly, it is impossible for decision makers to know whether moving forward with this project will allow the Port to meet clean air goals because the goals have not been established yet. Moreover, this is not an issue that is in front of the Port for the first time. On September 25, 2007, more than eight months ago, several members of the now inoperative CAAP stakeholder group brought the extreme delay in setting these standards to the Port's attention. Moreover, this issue consistently was raised throughout the discussions on the TraPac project.

Given these circumstances, it would not be in the public interest to decide whether to certify the China Shipping DEIS/DEIR or approve the project before the San Pedro Bay Standards promised in the CAAP have been adopted.

III. The Health Risk Analysis In The DEIS/DEIR Should Be Revised.

The health risk analysis in the DEIS/DEIR does not comport with the spirit of CEQA and NEPA because it is confusing and obscures the true impacts of this project. In an

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[4] CAAP Final Technical Report at 24.
[5] See Table E-3-74.
[6] See http://caap.airsis.com/. The U.S. EPA standard for annual average PM 2.5 exposure is 15 milligrams per cubic meter. The analogous California standard is 12 milligrams per cubic meter.
[7] http://www.aqmd.gov/prdas/matesIII/matesIII.html
[8] http://www.aqmd.gov/matesiidf/matestoc.htm

effort that distracts attention from the fact that this project exceeds the 10 in a million cancer risk commitment in the Clean Air Action Plan, the Port has provided an analysis of the health risk associated with the project between 2009 and 2078. This data has little or no relevance to the current debate over this project, and does not change the fact that the project will increase residential cancer risk by 11 in a million for the relevant period from 2004 until 2073. Because the project will exceed the CAAP threshold, the next iteration of this environmental document must include mitigation measures to make this project fall below the 10 in a million threshold. [9]

Unless these problems are cured, the health risk assessment does not fulfill its statutory job of informing the decisionmakers about the potential effects of approving the project.

IV. The Port must evaluate and improve the mitigation measures.

Under CEQA, "it is the policy of the state that public agencies should not approve projects as proposed if there are . . . feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects."[10] We continue to remain concerned about the failure to mitigate all significant impacts to insignificance. Below, we provide some of the measures that concern us the most:

> *The DEIS/DEIR Must Evaluate Electric Drayage Trucks As Mitigation For The Effects Of The Project On Air Quality.*

On May 16, 2008, with great fanfare, the Port gave a public demonstration of the electric drayage truck that it has been working on for months.[11] As the Port's website states:

> Built as a demonstration project co-funded by the Port and SCAQMD, and designed specifically for short-haul or "drayage" operations, this electric tractor was the result of nearly a year of development and testing. The heavy-duty electric short-haul drayage truck -- the first of its kind at any port worldwide -- can pull a 60,000-pound cargo container at a top speed of 40 mph, and has a range between 30 to 60 miles per battery charge. The battery charger can charge up to four electric trucks simultaneously in four hours and can also provide up to 60 percent of the charge in one hour to meet peak demands during daily operations. On a kilowatt hour of energy cost-basis, this electric truck costs roughly 20 cents a mile to operate. On a per-mile cost-

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[9] Compare Table E-3-7-4 with Table E-3-7-7.
[10] *Los Angeles Unified School Dist. v. City of Los Angeles*, 58 Cal.App.4th 1019, 1028-29 (1997).
[11] See the Port-produced video at: http://www.youtube.com/watch?v=0f1AlrG8gVU. This video was uploaded on May 15, 2008.

> basis, a common diesel truck could cost anywhere from four to nine times as much, depending on fluctuating fuel costs and actual duty-cycle activity (100 percent duty cycle equals zero percent truck idling). Future widespread application of a fleet of electric trucks would be especially useful at the Port of Los Angeles because, on an annual basis, more than two million truck drayage trips take place between the port terminals and rail and warehouse facilities within five to ten miles of San Pedro Bay.[12]

President of the Los Angles Harbor Commission, David Freeman, is quoted as saying:

> "Electric trucks can provide the backbone we need for a substantially cleaner drayage fleet serving our ports in the years to come. We could eliminate a lot of truck pollution in and around the port with a fleet of these workhorses."[13]

However, although the DEIR shows increased emissions of PM 2.5 particulates,[14] there is no mention of mitigating that admittedly significant impact by the use of electric drayage trucks. This is a major oversight. We suggest that the air quality section of the DEIR needs to be rewritten to analyze the extent of the mitigation that electric drayage trucks could provide over the life of the project.[15]

Low Sulfur Fuel Mitigation Must Be Greatly Enhanced

We are pleased that the DEIS/DEIR includes an emissions reduction strategy for the main engines of ocean-going vessels that is in line with the auxiliary engine requirements. Cleaner fuels in both types of engines could significantly reduce emissions from virtually unregulated engines transiting and maneuvering at the Port of Los Angeles. However, we have significant concerns that the implementation schedule and sulfur fuel level are not nearly stringent enough. Strengthening this measure could result in significant decreases in PM_{10} and $PM_{2.5}$ levels as well as reduced cancer risk from DPM.

The Maersk commitment to cleaner fuel, information provided by marine engine manufacturers, PMSA's members' compliance with CARB's Auxiliary Engine Regulation, and the Port of Los Angeles' recent low sulfur fuel tariff now provide substantial evidence that any technological concerns regarding the use of cleaner

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[12] http://www.portoflosangeles.org/newsroom/2008_releases/news_051608_et.asp
[13] *Id.*
[14] Table 3.2-28.
[15] Section VI C of the China Shipping Amended Stipulated Judgment provides that "any dispute regarding the feasibility of mitigation measures" in this DEIS/DEIR "will be resolved by arbitration."

fuels in auxiliary engines and main engines have been addressed. At a Maritime Working Group meeting, representatives of some of the world's biggest engine manufactures and shipping lines including MAN B&W, Wartsila, BP Shipping, DNV, Maersk and other participants, concurred that the implementation of cleaner fuels in main engines is an excellent approach to achieve significant emission reductions in a cost-effective manner.[16] They consider fuel switching to be a standard operation that can be conducted safely by any competent marine engineer. These technical experts made it clear that low sulfur levels, such as 1000 ppm, in marine fuels were compatible with large ship engines and maritime operations in general, and that if it were required, the "free market" would respond and make supplies available. In fact, it is our understanding that NYK Line at the Port of Los Angeles is currently using less than 1% sulfur fuel.[17]

Given the substantial shortfall that exists to achieve the CEQA significance thresholds in the short-term horizon years for this project, it is imperative that the DEIS/DEIR pursue the cleanest lower sulfur distillate fuels in both auxiliary and main engines for all ships visiting the berths. Additionally, CARB announced at their September 25, 2007 marine regulation workshops that emissions from boilers are ten times higher than previously calculated. The resulting SOx, NOx and PM emissions must be addressed at the outset with the use of significantly cleaner fuels. In fact, without a high level of stringency on marine fuel usage for auxiliary engines, main engines and boilers, the South Coast AQMD's ability to meet Federal Standards for $PM_{2.5}$ will be jeopardized.

Therefore, we recommend that the DEIS/DEIR require the following:

• Ensure 100% compliance and enforcement of the 2,000 ppm requirement for auxiliary engines, regardless of the status of the CARB auxiliary engine regulation; and

• By January 1, 2010, take necessary steps to ensure 100% compliance and enforcement of the 1,000 ppm requirement for auxiliary engines (interim deadlines for 1,000 ppm sulfur fuel should require 25% using 1,000 ppm by 2008; and a 50% requirement by 2009). This is especially important given that the Port projects the highest emissions levels to occur in 2010.[18]

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[16] The Maritime Air Quality Technical Working Group, Focus on Fuel Switching, hosted by CARB, July 24, 2007; http://www.arb.ca.gov/ports/marinevess/meet.htm.
[17] SCAQMD, Mitigation Measure Examples: Ocean Going Vessels, *available at http://www.aqmd.gov/CEQA/handbook/mitigation/ogv/TableIX.doc*. In addition, at the recent Future Ports conference in Long Beach, a representative from Maersk stated that 0.2% sulfur fuel purchased by Maersk is often closer to 0.1%.
[18] DEIS/DEIR, at 3.2-79.

• Main engines and boilers, at a minimum, should fall under the same requirements and timetable as we recommend for auxiliary engines and, by 2010, main engines should be required to use 1,000 ppm fuel.

DPFs for Locomotives Must Phased in Sooner than 2015

Mitigation Measure AQ-18 has a timeframe that is years too long. CARB and the California Emissions Program have been involved in demonstration projects for DPF retrofits for locomotives since 2006. Results from these projects have shown reductions of PM of 80%.[19] In addition, the CAAP provides that starting in 2012, and fully implemented by 2014, the fleet average for Class 1 long haul locomotives calling at the Port will be Tier III equivalent, defined as "Tier 2 equipped with DPF and SCR or new locomotives meeting Tier 3."[20] Given this, it is not convincing for the Port to assert that it will take seven years to implement DPFs on these locomotives. Implementation should begin in the 2010-2011 time frame or earlier.

V. The DEIS/DEIR Admits That Impacts Will Occur In The Community But Fails To Provide Mitigation Measures For Those Impacts.

The DEIR/DEIR determined that there will be significant air quality impacts from the China Shipping project in the surrounding community.

> With mitigation, offsite ambient concentrations from proposed Project operations would be reduced for PM_{10}, $PM_{2.5}$, and annual NOx, but would increase for CO and 1-hour NOx. These increases in concentrations are a result of LPG yard tractors having much higher NOx and CO emissions than their counterpart diesel yard tractors in the peak emission analysis year 2010 (addressed by MM AQ-15). From a CEQA perspective, offsite ambient concentrations from proposed Project operations after mitigation would be reduced for PM_{10} and $PM_{2.5}$, but would remain significant for 1-hour and annual NO_2, and 24-hour PM_{10} and $PM_{2.5}$. From a NEPA perspective, offsite ambient concentrations from proposed Project operations after mitigation would be reduced for PM_{10} and $PM_{2.5}$, but would remain significant for 1-hour and annual NO_2, and 24-hour PM_{10} and $PM_{2.5}$. . .The residual air quality impacts would be significant for NO_2, PM_{10}, and $PM_{2.5}$ under CEQA and NEPA.[21]

With respect to sensitive receptors in the area, the DEIS/DEIR states:

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[19] Fritz, Steve. *U.S. Locomotive Aftertreatment Retrofit Progress Report: SwRI Test Programs.* Southwest Research Institute. November 28, 2007. http://www.arb.ca.gov/railyard/ryagreement/112807fritz.pdf.

[20] Clean Air Action Plan at 29.

[21] 3.2-112

> The impact of air emissions on sensitive members of the population is a special concern. Sensitive receptor groups include children, the elderly, and the acutely and chronically ill. The locations of these groups include residences, schools, daycare centers, convalescent homes, and hospitals. The nearest sensitive receptors to the Project site include residents in eastern San Pedro and south Wilmington. Additionally, the Hawaiian Avenue Elementary School in Wilmington and the Barton Hill School at South Pacific Avenue and O'Farrell Street in San Pedro are about 1.3 and 0.5 miles away, respectively, from the proposed Berth 97-109 terminal. The nearest daycare center is the Toberman Child Care Center, about 0.7 mile southwest of the Project site. The nearest convalescent home is the Harbor View House, about 1 mile south of the Project site. The nearest hospital is the San Pedro Peninsula Hospital, about 1.5 miles southwest of the Project site.[22]

Yet, there is little or no mitigation proposed for the significant community air quality impacts of the project. This is inconsistent with CEQA and with the TraPac MOU that the Port and the City of Los Angeles recently entered into.

VI. The DEIS Erroneously Concludes That It Does Not Need a General Conformity Statement.

In a brief section at pages 3.2-17 and 3.2-18, the DEIS/DEIR provides a few details on general conformity requirements, but fails to provide an actual general conformity analysis. The Army Corps expects decision-makers and the public to engage in a leap-of- faith that a general conformity analysis has actually be conducted and the proposed federal action will not "(1) cause or contribute to any new violation of a NAAQS; (2) increase the frequency or severity of any existing violation; or (3) delay the timely attainment of any standard, interim emission reduction, or other milestone."[23] Not only does this approach evade the requirements of the Clean Air Act, it violates CEQA and NEPA.

VII. The DEIS/DEIR Contains An Inadequate Analysis Of Mitigation Measures For The Greenhouse Gases That The Project Will Create

The DEIS/DEIR concludes that the Project will cause an increase in the emission of greenhouse gases, even after the proposed mitigation.[24] Given the requirements of AB 32 to reduce greenhouse gas emissions, this is unacceptable, at least until all potential mitigation has been analyzed.

As noted above, the DEIR/DEIR has not analyzed the feasibility of phasing in electric drayage trucks. Analysis of the greenhouse gases associated with the production of electricity to power these trucks, combined with analysis of the potential reductions in

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[22] Sec. 3.2.2.4
[23] 3.2-17.
[24] 3.2-139

greenhouse gases resulting from the elimination of fossil fued powered trucks, may show that use of the electric trucks will have a very positive effect on production of GHGs. The same could be said for electric rail, at the terminal and along the Alameda Corridor. As the Port's website notes:

> An overall calculation of net emissions reductions still needs to be performed in order to take into account the emissions created in the generation of electric power used to charge the truck's batteries. However, based on the average emissions generated by the existing fleet of drayage trucks that serve the San Pedro Bay ports, Port of Los Angeles staff estimated the average pollution discharge generated by the estimated 1.2 million truck trips that occurred in 2006 between the ports and a local near-dock railyard (the Intermodal Container Transfer Facility or ICTF). If those 1.2 million truck trips were to be made with zero emission electric trucks, an estimated 35,605.6 tons of tailpipe emissions would be eliminated, including: 21.8 tons per year of Diesel Particulate Matter (DPM), 427.7 tons per year of localized Nitrogen Oxide (NOx) emissions, 168.5 tons per year of Carbon (CO), and 34,987.6 tons per year of Carbon Dioxide (CO2).[25]

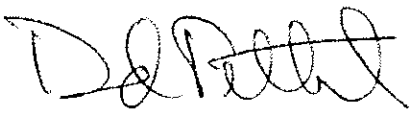
The "overall calculation" mentioned in this passage can and should be conducted in the China Shipping DEIS/DEIR to quantify the GHG reductions associated with implementation of electric trucks.

VIII. The Port's Environmental Documents Continue to Examine the Same Stale Alternatives.

We continue to remain concerned that the alternatives analysis in environmental documents from the Port and Army Corps examine the same set of alternatives. The alternatives examined in the TraPac project and the China Shipping project closely mirror each other. The Port needs to start thinking more aggressively on how to implement modern, clean transportation systems, and the alternatives analysis provides a good avenue to examine these systems.

Thank you for your consideration of this letter.

Sincerely,



David Pettit
Senior Attorney

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[25] http://www.portoflosangeles.org/newsroom/2008_releases/news_051608_et.asp