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Board of Harbor Commissioners  
Port of Los Angeles  
425 South Palos Verdes Street  
San Pedro, CA 90731

Members, Board of Harbor Commissioners

**Final Environmental Impact Statement/Environmental Impact Report:  
Berth 136 – 147 (TraPac) Container Terminal Project**

The SCAQMD staff previously submitted written comments on the Draft Environmental Impact Statement/Environmental Impact Report for the TraPac project. We appreciate the effort port staff made to meet with us to discuss our comments, and we acknowledge the changes made to the Final EIS/EIR in response to our comments and those made by others. We also acknowledge that the EIR proposes a wide range of significant air pollution control measures including a clean truck program, shore power and vessel speed reduction. Although implementation of the control measures in the EIR will ultimately reduce emissions, the SCAQMD staff remains concerned that emissions and health risk in the area will remain at unacceptable levels due largely to emissions from the two ports, and the EIR does not fully utilize all opportunities to control emissions. This letter addresses four key areas in which the EIR does not implement all feasible mitigation measures. We urge the Commission to strengthen the control measures as described below.

**1. The proposed schedule to implement low sulfur fuels for main and auxiliary engines is longer than necessary and is inconsistent with adopted air quality plans.**

Marine vessels burn the dirtiest of all fuels in the largest of all engines, and do so upwind of the most polluted area of the country and 16 million residents. The EIR proposes to phase in .2% lower sulfur fuel between 2009 and 2015, with 50% of vessel calls using such fuels by 2012 (based on TraPac's parent controlling vessels making 50% of calls).

This schedule must be accelerated. Waiting seven years for all ships at TraPac to use lower sulfur fuel, as proposed in the EIR, will allow over 640 vessel calls using dirty fuels just between 2011 and 2015, and over 1,300 calls between 2008 and 2015. The State Implementation Plan (SIP) approved by SCAQMD and CARB assumes that .1% sulfur fuel will be used in all main and auxiliary engines by 2010. Cutting fuel sulfur content is one of the most important measures in the region's air quality plan in terms of health benefits. AQMD staff estimates that the marine

vessel control measures in the SIP will prevent hundreds of premature deaths regionwide each year, largely due to reductions in particulates through use of lower sulfur fuels.

The low sulfur fuel schedule can be accelerated. Maersk is using lower sulfur fuel now. The United States government – certainly not a leader when it comes to adopting ship emission controls – has proposed to the International Maritime Organization that all ships in polluted areas use .1% sulfur fuel, or have equivalent controls, *by 2011*. The World Shipping Council, which represents carriers transporting over 90% of containerized cargo, supports that U.S. position. Just last week, EPA issued an advanced notice of proposed rulemaking based on the U.S. proposal to IMO.

*We therefore ask why does the proposed TraPac lease allow four years more than a proposal by the U.S. government which is supported by industry?* Port staff's primary reason for the proposed schedule is *not* based on time needed to supply low sulfur fuels or to retrofit ships. Rather, the reason is "largely to accommodate financial considerations." (Response to SCAQMD comment, p. 2-75). The EIR notes that TraPac lost third-party invitees due in part to expected environmental requirements. We understand that the invitees went to the Port of Long Beach.

The question for the Harbor Commission is how to respond to such concerns about competitive disadvantage. The *wrong* response is to delay air quality requirements. This will only lead every other terminal operator to demand the same concession. The proper response is for both ports to expeditiously require low sulfur fuels *as broadly as possible*. That is why we urge the ports to (1) state and implement a policy of requiring in each lease that low sulfur fuels be expeditiously implemented – we have recommended within six months, and (2) move quickly to adopt a port-wide tariff requiring low sulfur fuels. The Commission sets the policy for this port, and that policy should simply be that no ship burning dirty fuels comes here. Stating that requirement in each and every lease will also spur support for a tariff.

A final point regarding the compliance schedule in the EIR: There is particularly little justification for allowing MOL (the parent of TraPac) until 2012 to use low sulfur fuels in all its ships. MOL has substantial resources. Moreover, we understand that Maersk began implementing its program within weeks after making the go decision, and it now has utilized .2% sulfur fuels in well over 70 vessels. If the Commission concludes that it must allow temporary exceptions based on time needed to retrofit specific ships, write the lease that way. We previously provided proposed lease language tailored to accomplish this.

**2. The EIR proposes no enforceable provision requiring new vessels to be built with advanced emission controls, and there is no enforceable provision allowing the port to impose such requirements during the 30 year term of this lease.**

We are on the verge of losing a never-to-return opportunity. An enormous number of ships are now on order for construction. Once those vessels are built and in the water, the economic and technical challenges to retrofit advanced controls such as Selective Catalytic Reduction will grow dramatically. The State Implementation Plan approved by SCAQMD and CARB assumes that vessels will meet fleet average emission reductions through a combination of advanced controls for new vessel builds and retrofits of existing vessels. Those emission reductions include a 30% reduction of NOx and particulates by 2014, and a 70% reduction of NOx and 50% reduction of particulates by 2023. Such reductions are feasible and needed to ensure consistency

with the adopted air quality plans to meet federal attainment deadlines. Such requirements could also provide short-term benefits as vessel operators ramp up to fully comply. These emission reductions should be required by the TraPac lease.

**3. The EIR does not require all locomotives coming onto port property to be equipped with diesel particulate filters or equivalent by 2014, as set forth in the CAAP.**

DPFs can feasibly be applied to locomotives serving the San Pedro Bay Ports between 2012 and 2014, as specified in the CAAP. Application of DPFs to locomotives is occurring now in Europe. Rather than using the port's authority as a landlord to require such controls, the EIR relies on seeking an MOU with the Class 1 railroads. The prospects for success of this effort are speculative at best.

**4. The EIR does not propose sufficient on-dock rail capacity to handle all containers to be directly shipped out of this region, thereby increasing pressure to approve new and expanded railyards closer to impacted residential neighborhoods.**

The CAAP committed the port to evaluate alternatives that might increase on-dock capacity such as shipping containers out of the region unsorted by destination and altering land use arrangements within the ports. We have yet to see a quantitative analysis explaining why these or other alternative operating scenarios could not expand available on-dock capacity.

In closing, the TraPac project is in many respects the most important matter to be considered by the port since adoption of the Clean Air Action Plan. The CAAP in large part relies on marine terminal lease conditions to implement control measures. In such lease provisions the port has unique authorities to control pollution -- authorities that are not shared by regulatory agencies. In addition, this is the first of many major terminal projects that will come before the Commission. Your actions here will set expectations on the part of other terminal operators.

We are confident that the Commission will continue to show the leadership embodied in its adoption of the Clean Air Action Plan. AQMD commits to continue to assist in any way we can to ensure your efforts are successful.

Thank you for the opportunity to comment on this important project. If you have any questions, please call me or Peter Greenwald at (909) 396-2100.

Sincerely,



Barry R. Wallerstein, D.Env.  
Executive Officer

## **Response to Comments: SCAQMD Comments on the Berth 136-147 Final EIR**

### **1. The proposed schedule to implement low sulfur fuels for main and auxiliary engines is longer than necessary and is inconsistent with adopted air quality**

The proposed schedule for implementation of low sulfur fuels is consistent with the Clean Air Action Plan (CAAP), which is the Port's five-year commitment to the State Implementation Plan (SIP). Use of CEQA documents to impose emission reductions is only one of the implementation strategies envisioned in the CAAP. As the SCAQMD appropriately mentions in this comment letter, the Port intends to move forward with the CAAP including a tariff to effect the use of low sulfur fuel across San Pedro Bay. Indeed, as suggested by AQMD, the Port is working as quickly as possible to implement a low sulfur fuel tariff. The CAAP also envisions the need for additional information on the availability of fuel in quantities required for the number of ships entering San Pedro Bay. The Maersk approach is not necessarily applicable to all customers. First of all, with some exceptions, only Maersk ships presently call at their facilities, which give them better control of technology application on their own ships. Second, some ships will require retrofits to carry and switch over to low sulfur fuel while in transit. According to reports from Maersk, retrofits cost approximately \$300,000 per ship, however, different ships may require different retrofits increasing or decreasing these estimates.

Use of low sulfur fuel is complicated by the fact that, historically, half of TraPac's business has been third-party invitees. As discussed in the EIR, TraPac has lost a number of these invitees but hopes to attract new business as a result of the proposed Project. Because these invitees are unknown at this time, TraPac does not know exactly what type of ships will call at the terminal and therefore what types of potential retrofits, are necessary. Without knowing what ships will call, along with the extra fuel costs associated with low sulfur fuel (presently approximately \$350 more per ton than bunker fuel), retrofit costs are also not known. TraPac therefore, may be at a competitive disadvantage if the invitee can go to other terminals without the need to retrofit and purchase more expensive low sulfur fuel. Because TraPac is among the first terminal required to adhere to environmental measures, the phase-in schedule allows TraPac time to negotiate contracts with invitees.

Although it is certainly promising that EPA has forwarded potential fuel requirements to IMO, it is also true that U.S. EPA has not promulgated such regulations here on U.S. flagged vessels, nor has the U.S. ratified MARPOL Annex VI which would allow implementation of 1.5% sulfur fuel in U.S. waters. Industry supports such proposal because the rule is applied at the international level which creates an even playing field for all shipping companies and terminal operators. Although the SCAQMD and CARB have proposed a number of strategies to reduce sulfur content in fuel for ocean going vessels, currently there is only one enforceable regulation covering this issue in the state of California. CARB's fuel rule covers only auxiliary engines, and only applies to ships that do not cold-iron while at berth. In addition, the CARB rule is currently being litigated. The Port proposes to go beyond CARB's existing regulation to require vessels to switch to low-sulfur fuels in auxiliary and main engines, and boilers. Should CARB and/or EPA adopt additional regulations going beyond what is described in the CAAP, the tenant would be required to comply. Until such time, this project will achieve real emissions reductions beyond

that required in any regulatory scheme. Because it is a negotiated strategy, the Port has had to balance the business realities of the customer to allow a phase-in program that takes into account the differences in relationships between the terminals primary client and other invitees. That is specifically why a number of implementation strategies are included in the CAAP.

**2. The EIR proposes no enforceable provision requiring new vessels to be built with advanced emission controls, and there is no enforceable provision allowing the port to impose such requirements during the 30 year term of this lease.**

Even air quality plans like the AQMP and the SIP recognize that it is difficult to forecast technology decades into the future. Therefore, these plans rely on “black-box” measures that describe an endpoint where no technology currently exists. Unfortunately, the Port does not have the ability create a provision within a lease that can adequately address these uncertainties. There is no consensus on availability of feasible advanced technologies for vessels at this time, let alone those available in 30 years. The Port is however, committed to advancing vessel technologies. As discussed in the Final EIR, MM AQ-17 (below) was included to address this issue. MM AQ-17 provides a mechanism to identify and implement future technology at regular intervals over the lease.

*MM AQ-17: The Port shall require the Berths 136-147 tenant to review, in terms of feasibility, any Port identified or other new emissions-reduction technology, and report to the Port. Such technology feasibility reviews shall take place at the time of the Port's consideration of any lease amendment or facility modification for the Berths 136-147 property. If the technology is determined by the Port to be feasible in terms of cost, technical and operational feasibility, the tenant shall work with the Port to implement such technology. As partial consideration for the Port's agreement to issue the permit to the tenant, tenant shall implement not less frequently than once every 7 years following the effective date of the permit, new air quality technological advancements, subject to the parties' mutual agreement on operational feasibility and cost sharing which shall not be unreasonably withheld.*

Further, the Port is committed to implementing the CAAP as its fair share of reducing regional emissions and its effort toward the SIP. There are other parties, including the State that are also bear responsibilities for implementing controls to attain the reductions identified in the SIP.

**3. The EIR does not require all locomotives coming onto port property to be equipped with diesel particulate filters or equivalent by 2014, as set forth in the CAAP.**

The Port must balance its desire to require cleaner rail operations in a short time period against the risk that rail companies will reduce service options at on-dock facilities. While the Port, as a landlord, has a substantial amount of control over use of its properties, the control depends on companies wanting to do business at the Port. Where other facility or service options are available, these companies have the ability to make alternative business decisions. For instance, Class 1 railroads could stop servicing on-dock rail yards and essentially force cargo to be drayed to near and off-dock rail yards, where the Port has no jurisdiction. This scenario would have the effect of putting more cargo onto trucks and our local and regional roadways.

Since adoption of the CAAP, staff has been in discussion with the Class 1 railroads on actions that can voluntarily be adopted. The Port does not have the ability of a regulatory agency, such as the U.S. EPA to set emissions standards. The measures included in the TraPac EIR are consistent with the CAAP.

The Final EIS/EIR proposes to implement diesel particulate traps (DPTs) on PHL locomotives beginning in 2015. This control measure is a strategy of RL-1 and it would reduce diesel particulate matter (DPM) emissions from these locomotives by about 90 percent from uncontrolled levels.

**4. The EIR does not propose sufficient on-dock rail capacity to handle all of the containers that will be directly shipped out of this region, thereby increasing pressure to approve new and expanded railyards closer to impacted residential neighborhoods.**

Comment noted. The Port is committed to increasing on-dock capacity to meet the needs of our customers. The Port is exploring a range of alternatives to meet this goal. The study in question is still in preparation, and is expected to be completed in spring of 2008. In the short term, there are significant regional barriers to moving containers out of the region unsorted by destination (often referred to as a shuttle train concept), both physical and jurisdictional/political. As discussed above, the Port does not have the ability to control Class 1 rail operations outside Port boundaries. Physical constraints include a set rail network that may not be able to accommodate a shuttle train without significant construction and operational changes. This project would not limit our ability to consider such options in the future. However, such options cannot be integrated into this project until the barriers are overcome.

Finally, due to the existing physical configuration of the Berth 136-147 terminal, construction of a on-dock facility that could handle more than the 700,000 TEU/year would jeopardize the ability of TraPac to unload cargo at the Berths due to backland constraints. Essentially, there would not be enough land left behind the berth to effectively process the ships cargo.