



NATURAL RESOURCES DEFENSE COUNCIL

COALITION  
FOR A SAFE  
ENVIRONMENT

February 6, 2008

**Via Hand Delivery And Certified Mail, Return Receipt Requested**

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**Re: 90-Day Notice of Intent to Initiate Action Under the Resource  
Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.***

Gentlemen:

This letter provides notice to the City of Long Beach, the Long Beach Board of Harbor Commissioners, and the Port of Long Beach (collectively the “Port”) under 42 U.S.C. § 6972(b) of the intent of the Natural Resources Defense Council (“NRDC”) and the Coalition For A Safe Environment (“CFSE”), for themselves and on behalf of their members who live or work near the Port, or who are affected by the Port’s improper disposal of solid wastes, to file a complaint under the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.* (“RCRA”), to remedy the imminent and substantial endangerment to public health and the environment caused by disposal of arsenic, cadmium, nickel, inorganic lead, antimony compounds, beryllium compounds, cobalt compounds, manganese compounds, mercury compounds, phosphorus, selenium, and other compounds onto the land and into water while attached to or associated with diesel particulate matter (collectively referred to as “diesel particulate hazardous waste”

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or “diesel PM”) that the Port is allowing to be disposed of through its operations. Unless we are confident that the Port has eliminated the substantial and imminent endangerment to public health and the environment caused by such disposal, we will file suit in federal court after 90 days have expired from the date of this letter.

### **I. The Port of Long Beach Emits High Levels of Diesel Particulate Hazardous Waste**

Diesel particulate hazardous waste emanating from operations at the Port of Long Beach is exacting a huge toll on local residents and the environment. “Particulate matter” (“PM”) is the generic term for a type of pollution that consists of varying and complex mixtures of solid and hazardous waste particles discharged into the air and deposited onto land and water.<sup>1</sup> Diesel particulate hazardous waste is formed when diesel fuel is combusted.<sup>2</sup> Particulate matter that is less than 10 microns in diameter is referred to as “PM<sub>10</sub>”; particulate matter less than 2.5 microns in diameter is referred to as “PM<sub>2.5</sub>”; and particulate matter that is less than 0.1 microns is referred to as “ultrafine particles.”<sup>3</sup> As a point of reference, a human hair is roughly 75 microns in diameter.<sup>4</sup> The small size of these particles makes them “easily inhaled deeply into the lungs where they can be absorbed into the bloodstream or remain embedded for long periods of time.”<sup>5</sup> Also, these particles have a relatively large surface area which makes them an excellent medium for adsorbing solid organic compounds, including heavy metals and polycyclic aromatic hydrocarbons, many of which may have carcinogenic and other negative health effects on humans.<sup>6</sup>

In September, 2007, the Port of Long Beach released its emissions inventory for 2005, which found that its operations alone emitted 1,008.4 tons per year of diesel PM, 1,104.5 tons per year of PM<sub>10</sub>, and 928.2 tons per year of PM<sub>2.5</sub>.<sup>7</sup> The bulk of these emissions are from oceangoing vessels and heavy duty diesel trucks that the Port, as a landlord, allows to use Port property.<sup>8</sup> These emissions from Port operations disproportionately impact low income communities and communities of color.<sup>9</sup>

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<sup>1</sup> See <http://www.lungusa.org/site/pp.asp?c=dvLUK9O0E&b=35356>.

<sup>2</sup> See <http://www.lungusa.org/site/pp.asp?c=dvLUK9O0E&b=36089>.

<sup>3</sup> U.S. Environmental Protection Agency, Advance Notice of Proposed Rulemaking re Control of Emissions from New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder, RIN 2060-A038, at 17 (“EPA ANPR”).

<sup>4</sup> See <http://www.lungusa.org/site/pp.asp?c=dvLUK9O0E&b=35356>.

<sup>5</sup> See <http://www.lungusa.org/site/pp.asp?c=dvLUK9O0E&b=35356>.

<sup>6</sup> See <http://www.mindfully.org/Air/2002/Diesel-Lung-Cancer-EPA3sep02.htm>.

<sup>7</sup> Port of Long Beach, 2005 Air Emissions Inventory, at 6 (Sept. 2007), available at <http://www.polb.com/civica/filebank/blobdload.asp?BlobID=4412>.

<sup>8</sup> *Id.*

<sup>9</sup> EPA, Control of Emissions from New Locomotive Engines and New Marine Compression-ignition Engines less than 30-liters per Cylinder, App. G, G-43-45, EPA-HQ-OAR-2003-0190-0752.7, available at [http://www.regulations.gov/search/search\\_results.jsp?css=0&N=0&Ntk=All&Ntx=mode+matchall&Ne=2+8+11+8053+8054+8098+8074+8066+8084+8055&Ntt=EPA-HQ-OAR-2003-0190-0752.7&sid=117EC63BCB67](http://www.regulations.gov/search/search_results.jsp?css=0&N=0&Ntk=All&Ntx=mode+matchall&Ne=2+8+11+8053+8054+8098+8074+8066+8084+8055&Ntt=EPA-HQ-OAR-2003-0190-0752.7&sid=117EC63BCB67).

Additionally, Port operations are growing—creating mounting concerns that Port pollution will continue to increase in the future. Studies estimate that freight volumes will double or triple in the Los Angeles region over the next two decades.<sup>10</sup> In particular, the Port of Long Beach has especially ambitious expansion plans, including the Pier S expansion project, the Middle Harbor Redevelopment project, and expansion of the Gerald Desmond Bridge. In fact, a recent cumulative impacts analysis in the Environmental Impact Statement/Environmental Impact Report for the TraPac Container Terminal Expansion project at the Port of Los Angeles indicates that the Port of Long Beach has more than 9 major expansion projects in the queue.<sup>11</sup>

We recognize that the Port has existing plans to reduce the harmful emissions emanating from its operations, but due to the Port's failures to implement its plans, the pollution levels are rising.<sup>12</sup> We have no reason to believe this situation will turn around absent this litigation.

## **II. Port of Long Beach Emissions Present an Imminent and Substantial Endangerment to Public Health and to the Environment**

The RCRA hazardous wastes which the Port is allowing to be disposed of through its operations have well-documented, serious effects on human health and the environment. The following bullets are EPA's assessment of some of the human health impacts that result from some of the constituents of diesel particulate hazardous waste:

- *Lead.* "Lead is a very toxic element, causing a variety of effects at low dose levels. Brain damage, kidney damage, and gastrointestinal distress are seen from acute [] exposure to high levels of lead in humans. Chronic [] exposure to lead in humans results in effects on the blood, central nervous system [], blood pressure, kidneys, and Vitamin D metabolism. Children are particularly sensitive to the chronic effects of lead, with slowed cognitive development, reduced growth and other effects reported. Reproductive effects, such as decreased sperm count in men and spontaneous abortions in women, have been associated with high lead exposure. The developing fetus is at particular risk from maternal lead exposure, with low birth weight and slowed postnatal neurobehavioral development noted."<sup>13</sup>

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<sup>10</sup> CARB, Proposed Emission Reduction Plan for Ports and Goods Movement in California, at 18 (March 22, 2005) (hereinafter "CARB ERP"), available at [http://www.arb.ca.gov/planning/gmerp/march21plan/march22\\_plan.pdf](http://www.arb.ca.gov/planning/gmerp/march21plan/march22_plan.pdf); Southern California Association of Governments, 2008 Regional Transportation Plan, Goods Movement Report, at 7 (Dec. 2007), available at [http://www.scag.ca.gov/rtp2008/pdfs/drafttrp/reports/Goods\\_Movement.pdf](http://www.scag.ca.gov/rtp2008/pdfs/drafttrp/reports/Goods_Movement.pdf).

<sup>11</sup> Port of Los Angeles, Berths 136-147 [TraPac] Container Terminal Project Draft Environmental Impact Statement/Final Environmental Impact Report, 4-5 (June 2007), available at [http://www.portoflosangeles.org/EIR/TraPac/eir\\_062907trapac.htm](http://www.portoflosangeles.org/EIR/TraPac/eir_062907trapac.htm).

<sup>12</sup> Port of Long Beach, 2005 Air Emissions Inventory, at 11 (concluding that there was "an overall increase in emissions for all pollutants" when comparing the Port's 2005 inventory with adjusted 2002 emission levels).

<sup>13</sup> See <http://www.epa.gov/ttn/atw/hlthef/lead.html>.

- *Arsenic*. “Acute [] high-level inhalation exposure to arsenic dust or fumes has resulted in gastrointestinal effects (nausea, diarrhea, abdominal pain); central and peripheral nervous system disorders have occurred in workers acutely exposed to inorganic arsenic. Chronic [] inhalation exposure to inorganic arsenic in humans is associated with irritation of the skin and mucous membranes. Chronic oral exposure has resulted in gastrointestinal effects, anemia, peripheral neuropathy, skin lesions, hyperpigmentation, and liver or kidney damage in humans. Inorganic arsenic exposure in humans, by the inhalation route, has been shown to be strongly associated with lung cancer, while ingestion of inorganic arsenic in humans has been linked to a form of skin cancer and also to bladder, liver, and lung cancer. EPA has classified inorganic arsenic as a Group A, human carcinogen.”<sup>14</sup>
- *Cadmium*. “The acute [] effects of cadmium in humans through inhalation exposure consist mainly of effects on the lung, such as pulmonary irritation. Chronic [] inhalation or oral exposure to cadmium leads to a build-up of cadmium in the kidneys that can cause kidney disease. Cadmium has been shown to be a developmental toxicant in animals, resulting in fetal malformations and other effects, but no conclusive evidence exists in humans... EPA has classified cadmium as a Group B1, probable human carcinogen.”<sup>15</sup>
- *Nickel*. “Nickel dermatitis, consisting of itching of the fingers, hands, and forearms, is the most common effect in humans from chronic [] skin contact with nickel. Respiratory effects have also been reported in humans from inhalation exposure to nickel. Human and animal studies have reported an increased risk of lung and nasal cancers from exposure to nickel refinery dusts and nickel subsulfide... EPA has classified nickel refinery dust and nickel subsulfide as Group A, human carcinogens, and nickel carbonyl as a Group B2, probable human carcinogen.”<sup>16</sup>
- *Antimony*. “Acute [] exposure to antimony by inhalation in humans results in effects on the skin and eyes. Respiratory effects, such as inflammation of the lungs, chronic bronchitis, and chronic emphysema, are the primary effects noted from chronic [] exposure to antimony in humans via inhalation.”<sup>17</sup>
- *Beryllium*: “Acute [] inhalation exposure to high levels of beryllium has been observed to cause inflammation of the lungs or acute pneumonitis (reddening and swelling of the lungs) in humans; after exposure ends, these symptoms may be reversible. Chronic [] inhalation exposure of humans to beryllium has been reported to cause chronic beryllium disease (berylliosis), in which granulomatous lesions (noncancerous) develop in the lung... EPA has classified beryllium as a Group B1, probable human carcinogen.”<sup>18</sup>
- *Cobalt*. “Acute [] exposure to high levels of cobalt by inhalation in humans and animals results in respiratory effects, such as a significant decrease in ventilatory

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<sup>14</sup> See <http://www.epa.gov/ttn/atw/hlthef/arsenic.html>.

<sup>15</sup> See <http://www.epa.gov/ttn/atw/hlthef/cadmium.html>.

<sup>16</sup> See <http://www.epa.gov/ttn/atw/hlthef/nickel.html>.

<sup>17</sup> See <http://www.epa.gov/ttn/atw/hlthef/antimony.html>.

<sup>18</sup> See <http://www.epa.gov/ttnatw01/hlthef/berylliu.html>.

- function, congestion, edema, and hemorrhage of the lung. Respiratory effects are also the major effects noted from chronic [] exposure to cobalt by inhalation, with respiratory irritation, wheezing, asthma, pneumonia, and fibrosis noted. Cardiac effects, congestion of the liver, kidneys, and conjunctiva, and immunological effects have also been noted in chronically-exposed humans.”<sup>19</sup>
- *Manganese.* “Chronic [] exposure to high levels of manganese by inhalation in humans may result in central nervous system (CNS) effects. Visual reaction time, hand steadiness, and eye-hand coordination were affected in chronically-exposed workers. A syndrome named manganism may result from chronic exposure to higher levels; manganism is characterized by feelings of weakness and lethargy, tremors, a mask-like face, and psychological disturbances. Respiratory effects have also been noted in workers chronically exposed by inhalation. Impotence and loss of libido have been noted in male workers afflicted with manganism.”<sup>20</sup>
  - *Mercury.* “Mercury exists in three forms: elemental mercury, inorganic mercury compounds (primarily mercuric chloride), and organic mercury compounds (primarily methyl mercury). All forms of mercury are quite toxic, and each form exhibits different health effects. Acute [] exposure to high levels of elemental mercury in humans results in central nervous system [] effects such as tremors, mood changes, and slowed sensory and motor nerve function. Chronic [] exposure to elemental mercury in humans also affects the [central nervous system], with effects such as erethism (increased excitability), irritability, excessive shyness, and tremors... Acute exposure to inorganic mercury by the oral route may result in effects such as nausea, vomiting, and severe abdominal pain. The major effect from chronic exposure to inorganic mercury is kidney damage... Acute exposure of humans to very high levels of methyl mercury results in [central nervous system] effects such as blindness, deafness, and impaired level of consciousness. Chronic exposure to methyl mercury in humans also affects the central nervous system with symptoms such as paresthesia (a sensation of pricking on the skin), blurred vision, malaise, speech difficulties, and constriction of the visual field. Methyl mercury exposure, via the oral route, has led to significant developmental effects. Infants born to women who ingested high levels of methyl mercury exhibited mental retardation, ataxia, constriction of the visual field, blindness, and cerebral palsy.”<sup>21</sup>
  - *Selenium.* “Hydrogen selenide is the most acutely toxic selenium compound. Acute [] exposure to elemental selenium, hydrogen selenide, and selenium dioxide by inhalation results primarily in respiratory effects, such as irritation of the mucous membranes, pulmonary edema, severe bronchitis, and bronchial pneumonia. Epidemiological studies of humans chronically [] exposed to high levels of selenium in food and water have reported discoloration of the skin, pathological deformation and loss of nails, loss of hair, excessive tooth decay and discoloration, lack of mental alertness, and listlessness... EPA has classified

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<sup>19</sup> See <http://www.epa.gov/ttn/atw/hlthef/cobalt.html>.

<sup>20</sup> See <http://www.epa.gov/ttn/atw/hlthef/manganes.html>.

<sup>21</sup> See <http://www.epa.gov/ttn/atw/hlthef/mercury.html>; see also <http://www.epa.gov/hg/effects.htm>.

elemental selenium as a Group D, not classifiable as to human carcinogenicity, and selenium sulfide as a Group B2, probable human carcinogen.”<sup>22</sup>

With respect to diesel particulate hazardous waste, numerous scientific studies have documented the human health effects of exposure, including specific studies on the effects on people who live and work near the Port of Long Beach. Diesel particulate hazardous waste causes cancer risk, premature death, asthma attacks and other respiratory symptoms, among other health impacts.<sup>23</sup> The most vulnerable populations are children and the elderly who may have other serious health problems.<sup>24</sup>

There are a number of human exposure pathways for diesel particulate hazardous waste, including dermal contact and the eating of contaminated food. CARB found that:

Airborne pollutants can deposit onto surfaces and waterways, providing another source of exposure. For example, goods movement activities contribute to non-point source runoff that contaminates coastal and bay waters with a number of toxicants, including PAHs [polycyclic/polynuclear aromatic hydrocarbons], dioxins, and metals. Exposures to pollutants that were originally emitted into the air can also occur as a result of dermal contact, ingestion of contaminated produce, and ingestion of fish that have taken up contaminants from water bodies. These exposures can all contribute to an individual’s health risk. In some cases, the risks from these kinds of exposure can be greater than the risks from inhalation of the airborne chemicals.<sup>25</sup>

CARB reported that the cancer risk from inhalation of diesel PM for residents of communities next to the Port of Long Beach was greater than 500 in a million, a risk 500 times higher than what the federal government considers acceptable.<sup>26</sup> The areas with risk of over 500 in a million include about 2,500 acres where 53,000 people live.<sup>27</sup> “The area where the risk is predicted to exceed 200 in a million is also very large, covering an area of about 29,000 acres where over 400,000 people live.”<sup>28</sup> “At the edge of the modeling study area, referred to as the modeling receptor domain, the potential cancer risk” is still as high as 100 in a million.<sup>29</sup> By way of context, in order to receive a permit

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<sup>22</sup> See <http://www.epa.gov/ttn/atw/hlthef/selenium.html>.

<sup>23</sup> See CARB, Health Effects of Diesel Exhaust Particulate Matter, (March 1, 2006), available at [http://www.arb.ca.gov/research/diesel/dpm\\_draft\\_3-01-06.pdf](http://www.arb.ca.gov/research/diesel/dpm_draft_3-01-06.pdf); see also EPA ANPR at 17-25.

<sup>24</sup> *Id.*

<sup>25</sup> CARB, ERP, at A-42, available at [www.arb.ca.gov/planning/gmerp/march21plan/appendix\\_a.pdf](http://www.arb.ca.gov/planning/gmerp/march21plan/appendix_a.pdf).

<sup>26</sup> *Id.* at A-15. Note that this study only considered “on-port” sources excluding pollution from trucks and locomotives operating in service to the ports. Therefore the risk estimates are likely significantly understated.

<sup>27</sup> *Id.* at A-81.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*



in the South Coast Air Basin for a new facility, the cancer risk cannot exceed 10 in a million.<sup>30</sup>

Recently, the South Coast Air Quality Management District (“SCAQMD”) released its draft Multiple Air Toxics Exposure Study III (“MATES III study”), which concluded that diesel particulates are the dominant source of cancer risk from inhalation of air toxics in the South Coast Air Basin, accounting for an estimated 84% of the risk.<sup>31</sup> The MATES III study further identified the area near the ports as having the highest concentration of diesel PM in the South Coast Air Basin—a fact that has remained unchanged since SCAQMD’s MATES II study in 1998/1999.

Additionally, in December 2007, NRDC and the Coalition for Clean and Safe Ports released a study on the exposure of port truck drivers to diesel exhaust while serving the Port of Oakland. That study, which included measurements of pollution inside the cab of trucks while drivers were working, found that port drivers are exposed to increased health risk by up to 2,600 excess cancer cases per million drivers—double the level considered acceptable by the Occupational Safety and Health Administration, and up to 2,000 times greater than the level typically considered acceptable by state and federal environmental protection agencies.<sup>32</sup> Drivers hauling freight to and from the Port of Long Beach likely experience similar or greater risks.

In addition to increased cancer risk, numerous studies have documented a wide range of other adverse health impacts due to exposure to fine particulates. Such impacts include increased risk for cardiovascular disease such as atherosclerosis, increased heart attacks, increased emergency room visits for acute health events, birth defects, low birth weights, premature births, and increased rates of death.<sup>33</sup> In 2005, CARB estimated that diesel exhaust from freight transport in California contributes to 2,400 premature deaths statewide every year, with 50% of these deaths occurring in the South Coast Air Basin.<sup>34</sup>

### **III. The Port of Long Beach Has Failed to Remedy the Problem of Hazardous Waste Emanating From its Operations**

In 2003, the Port consolidated several environmental initiatives under one umbrella called the Healthy Harbor Program, which included emphasis on air, water, wildlife, and soil/sediment.<sup>35</sup> In January of 2005, the Port adopted its Green Port Policy,

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<sup>30</sup> South Coast Air Quality Management District (“SCAQMD”) Rule 212(c)(3)(A)(ii).

<sup>31</sup> SCAQMD, Draft Report MATES-III, at ES-3 (Jan. 2008), *available at* <http://www.aqmd.gov/prdas/matesIII/matesIII.html>.

<sup>32</sup> NRDC et al., *Driving on Fumes: Truck Drivers Face Elevated Health Risks from Diesel Pollution*, at 4 (December 2007), *available at* <https://www.nrdc.org/health/effects/driving/contents.asp>.

<sup>33</sup> *Driving on Fumes: Truck Drivers Face Elevated Health Risks from Diesel Pollution*, at 5, fn.7-13 (December 2007) (citing numerous scientific studies documenting the health effects of PM, including the effects on Southern California residents).

<sup>34</sup> CARB ERP, at 4.

<sup>35</sup> Long Beach Harbor Department, *Green Port Policy—“White Paper”*, (August 15, 2005), *available at* <http://www.polb.com/civica/filebank/blobdload.asp?BlobID=2268>.

which included the goals to “[r]educ[e] harmful air emissions from Port activities”; “[i]mprove the quality of Long Beach Harbor waters”; and “[r]emove, treat, or render suitable for beneficial reuse contaminated soils and sediments in the Harbor District.”<sup>36</sup> And in 2006, jointly with the Port of Los Angeles, the Port passed a Clean Air Action Plan.<sup>37</sup> However, the Port’s intention to address the imminent and substantial danger to health and the environment of its operations is not the same as actually abating the harm. Indeed, the Port has failed to meet a number of critical deadlines under the Clean Air Action Plan. For example:

- By first quarter 2007, the Port was to adopt an implementation plan for reducing emissions from port trucks.<sup>38</sup>
- By Spring 2007, the Port was to adopt “San Pedro Bay Standards” that would commit the Port to reducing air pollution to levels that would help the region attain federal air quality standards.<sup>39</sup>
- By second quarter 2007, the Ports was to evaluate the use of “tariffs” to require port tenants to use cleaner marine fuels and bring any appropriate tariff to its Board for adoption by third quarter 2007.<sup>40</sup>

The Port has failed to meet the deadlines outlined in its environmental policies, making intervention from the public necessary to ensure that the Port’s operations are in compliance with environmental and common law. Moreover, such compliance will significantly reduce harm to human health and the environment. Further, litigation is necessary to remove any residual harm that may result after full implementation of the Port’s policies.

#### **IV. The Port of Long Beach’s Operations Violate the Resource Conservation and Recovery Act**

The citizen suit provision of RCRA, 42 USC § 6972(a)(1)(B), provides for liability against: “any person . . . who has contributed or is contributing to the . . . handling, storage, treatment, transportation or disposal . . . [of] solid or hazardous waste . . . [that] may present an imminent and substantial endangerment to health or the environment.” We intend to prove at trial that each of these elements is present with respect to the Port:

- *Disposal*: “Disposal” is defined in RCRA § 1004(3), 42 USC § 6903(3), as follows: “the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste or hazardous waste into or on any land or water so that such

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<sup>36</sup> See [http://www.polb.com/environment/green\\_port\\_policy/default.asp](http://www.polb.com/environment/green_port_policy/default.asp) (describing goals of Port of Long Beach, Green Port Policy).

<sup>37</sup> See San Pedro Bay Ports Clean Air Action Plan Overview (2006), available at [http://www.portoflosangeles.org/DOC/CAAP\\_Overview\\_Final.pdf](http://www.portoflosangeles.org/DOC/CAAP_Overview_Final.pdf).

<sup>38</sup> San Pedro Bay Ports Clean Air Action Plan Technical Report, at 73 (2006), available at <http://www.polb.com/civica/filebank/blobload.asp?BlobID=3451>.

<sup>39</sup> *Id.* at 26-27.

<sup>40</sup> *Id.* at 106, 110.



solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.” Here, the Port allows the discharge and placing of solid and hazardous diesel particulates into the air, from which it falls onto the ground and water nearby. This diesel particulate hazardous waste contains numerous RCRA hazardous wastes.

- *Contributing to:* The Port contributes to the disposal of RCRA hazardous wastes by allowing polluting ships, trucks, trains, harbor craft and cargo handling equipment to use its property.
- *Solid or hazardous waste:* Diesel particulate hazardous waste contains the following substances in solid form, all of which are on the RCRA list of hazardous substances: arsenic, cadmium, nickel, inorganic lead, antimony compounds, beryllium compounds, cobalt compounds, manganese compounds, mercury compounds, phosphorus, and selenium compounds.
- *Imminent and substantial endangerment to health or the environment:* The documented health effects from diesel particulate hazardous waste through inhalation and through other exposure pathways easily satisfy the level of risk that courts have found may present an imminent and substantial endangerment. Moreover, the Port is permitting diesel particulate hazardous waste to enter the physical environment, including waters of the United States.

#### **V. Steps That the Port Can and Must Take Now To Reduce Its Endangerment of Public Health**

Pending trial, the Port must prevent *increases* in emissions of RCRA hazardous wastes. Specifically, this means that the levels of diesel particulates may not increase from Port operations (over the data from the same month in the prior year) until the trial is completed. During that time, no construction or expansion projects should commence on Port land (or with Port approval) unless the Port proves to the satisfaction of the District Court that such activities will not at any time increase the level of hazardous diesel particulates emanating from the Port. In addition, no increases in throughput over the previous year’s levels would be permitted without such proof first being made.

On a permanent basis, the Port must achieve the *lowest attainable rates for diesel particulates*. The Port will be treated as a single entity, and its diesel particulate emissions shall not exceed those that would be achieved if every source category at the Port (i.e., ocean going vessels, heavy duty trucks, locomotives, cargo handling equipment and harbor craft) operated at the *lowest attainable rates for diesel particulates*. Periodic benchmarks and re-assessments will be necessary to monitor compliance and to account for improvements in technology. To achieve the *lowest attainable rates for diesel*

*particulates*, the Port must adopt, at a minimum, the following measures:

*Ocean-going vessels:*

(1) Low sulfur marine fuel:

- Within six months, ensure 100% compliance and enforcement of the use of 2,000 ppm low sulfur fuel for marine auxiliary and main engines within 40 nautical miles of the California coast; and
- By January 1, 2010, ensure 100% compliance and enforcement of the use of 1,000 ppm low sulfur fuel for marine auxiliary and main engines within 40 nautical miles of the California coast.

(2) Alternate Marine Power (“AMP”):

The Port shall require 50% of ship calls to use AMP by 2009 and 80% by 2010. By 2010, all ships capable of using AMP must use AMP while at berth.

(3) New Vessels:

The Port should require the shipping fleet calling at its wharves and terminals to meet a 30% reduction of oxides of nitrogen (“NOx”) and PM (over 2007 levels) by 2014, and a 70% reduction of NOx and 50% reduction of PM (over 2007 levels) by 2023. This could be achieved through the use of various technologies such as selective catalytic reduction, humid air motors, direct water injection, and particulate filters.

*Construction Equipment (Greater than 25 horsepower):*

Equipment greater than 25 horsepower must:

- (1) Meet current emission standards<sup>41</sup> and
- (2) Be equipped with Best Available Control Technology (“BACT”)<sup>42</sup> for emissions reductions of PM and NOx, or
- (3) Use an alternative fuel such as natural gas or biodiesel.

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<sup>41</sup> These standards are described in Division 3 Chapter 9, Article 4, Section 2423(b)(1)(A) of Title 13 of the California Code of Regulations, as amended. An explanation of current and past engine standards can also be accessed at <http://www.dieselnet.com/standards/>. Currently all new equipment meets US EPA Tier II standards and most equipment also meet Tier III standards (all 100HP to 750HP equipment). Note that Tier IV standards would automatically meet the BACT requirement.

<sup>42</sup> Here BACT refers to the “Most effective verified diesel emission control strategy” (VDECS) which is a device, system or strategy that is verified pursuant to Division 3 Chapter 14 of Title 13 of the California Code of Regulations to achieve the highest level of pollution control from an off-road vehicle.

*Port-serving Diesel Trucks:*

- Within 6 months, a fully developed truck replacement plan with a permanent funding mechanism must be in place so that the following schedule will be met or exceeded and suitable repair and replacement of the truck fleet will be guaranteed:

2008	40% (2007 USEPA); 10% (2010 USEPA)
2009	55% (2007 USEPA); 20% (2010 USEPA)
2010	55% (2007 USEPA); 45% (2010 USEPA)
2011	Same as 2010
2012	Same as 2010
2015	All trucks either 2010 USEPA or zero-polluting (see below)

The plan should include a methodology for scrapping the replaced trucks so that they are not used to pollute some other location. In addition, the Port must adopt a sustainable program that will strengthen the drayage truck market and ensure newer trucks are well-maintained and operated efficiently.

- By 2015, all off-port drayage to rail yards must be by zero-polluting vehicles.

*Rail Operations*

- All locomotives coming onto Port property must be equipped with diesel particulate filters or equivalent by 2014.
- All locomotives coming onto Port property must be equipped with U.S. EPA tier 3 engines within four years of adoption of those standards.

*Cargo Handling Equipment*

- All yard tractors must run on alternative fuels and meet U.S. EPA tier 4 non-road standards or 2007 on-road standards, effective immediately.
- All other cargo handling equipment (e.g., forklifts, top picks, side picks, reach stackers, and straddle carriers) must (1) meet current emissions standards and (2) be equipped with BACT for emissions reductions of NO<sub>x</sub> and PM, or (3) use an alternative fuel such as natural gas or biodiesel.
- Convert all diesel powered RTG cranes to hybrid systems including flywheel, battery or other energy storage devices.

*Harbor Craft*

- All harbor craft serving the Port must have engines meeting U.S. EPA tier 2 standards.
- All harbor craft serving the Port must be retrofitted with best available Verified Diesel Emission Control Strategies (“VDECS”) by 2012.

- All harbor craft serving the Port must employ U.S. EPA tier 3 standards or demonstrate equivalent emission reductions through VDECS within four years of adoption of those standards.
- All harbor craft serving the Port must verify that shorepower is used during any instances of power utilization while docked.

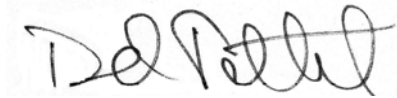
**VI. Preliminary and Permanent Injunctions; Duty to Preserve Evidence**

We invite the Port to discuss with us a resolution of the RCRA issues on a Port-wide basis. Unless these issues are resolved within 90 days of the date of this letter, we will file suit in federal district court under RCRA seeking preliminary and permanent injunctive relief to end the imminent and substantial endangerment of public health which the Port is allowing to occur.

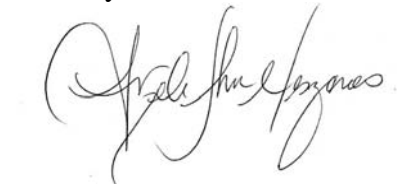
This letter also serves to remind you of your obligations under federal law to preserve materials that you know, or reasonably should know, might be relevant to the matters discussed in this letter, could lead to the discovery of admissible evidence, or are likely to be requested during discovery. These materials include, without limitation, information now existing or existing in the future in electronic format.

We look forward to your response.

Yours truly,



David Pettit  
Attorney for NRDC



Angela Johnson Meszaros  
Attorney for CFSE

cc: (Certified Mail, Return Receipt Requested)

Stephen L. Johnson, Administrator, United States Environmental Protection Agency  
Wayne Nastri, Administrator, Region 9, United States Environmental Protection Agency  
Maureen F. Gorsen, Director, California Department of Toxic Substances Control