

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
CENTRAL**

**MINUTE ORDER**

DATE: 05/24/2024

TIME: 09:00:00 AM

DEPT: 2004

JUDICIAL OFFICER PRESIDING: Timothy Taylor

CLERK: Taylor Crandall

REPORTER/ERM: Teri L. Smith CSR# 7949

BAILIFF/COURT ATTENDANT: M. McClure

CASE NO: **37-2021-00023385-CU-TT-CTL** CASE INIT.DATE: 09/16/2020

CASE TITLE: **Natural Resources Defense Council Inc vs City of Los Angeles [E-FILE]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Toxic Tort/Environmental

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**EVENT TYPE:** OSC - Non-Sanction

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**APPEARANCES**

KATHRYN E. ROBERTS, counsel, present for Petitioner,Appellant(s).

Jaclyn H Prange, counsel, present for Petitioner,Appellant(s).

Amrit S Kulkarni, counsel, present for Respondent on Appeal,Defendant,Respondent(s).

Joseph A Walsh II, counsel, present for Respondent on Appeal,Real Party In Interest (Rpii)(s).

Dennis M.P. Ehling, counsel, present for Respondent on Appeal,Real Party In Interest (Rpii)(s).

Tatiana K Gaur, counsel, present for Intervenor(s).

Gary Tavetian, counsel, present for Intervenor(s).

Julia Bond, counsel, present for Respondent on Appeal, Defendant, Respondent(s).

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**Second Amended Order Following Remand**

*Natural Resources Defense Council, Inc., et al. v. City of Los Angeles, et al.; SCAQMD v. City of Los Angeles, et al., Case No. 2021-23385*

OSC Heard: May 24, 2024, 9:00 a.m., Dept. 2004

The Court has reviewed the opinion of the Fourth District Court of Appeal, Div. 1, filed 12/29/23 in Case No. D080902 (and thereafter ordered published, 98 Cal. App. 5<sup>th</sup> 1176), remanding the case to this court to exercise its discretion to fashion an appropriate remedy in the first instance.\*

On April 11, 2024, this court ordered Respondent and the RPI, pursuant to Pub. Res. Code section 21168.9, to show cause, if any there be, why shipping activities at the China Shipping Terminal should not be suspended pending the setting by the court of a strict timeline for the Port's adoption of a new SEIR and the enforcement of the Lease to ensure compliance with mitigation measures. ROA 188.

The Court also ordered Respondent and the RPI to show cause, if any there be, why shipping activities at the China Shipping Terminal should not be suspended pending the filing of a return to the Writ of

Mandate entered by this court on July 12, 2022 (ROA 160), establishing that it has set aside its certification of the SEIR, as well as all related project approvals, as ordered by this court. ROA 188.

The Court ordered that the responses to the OSC filed by respondent and RPI address, at a minimum, the following questions:

1. *Whether a view by the trial court of current operations at the China Shipping Terminal under CCP section 651 would be appropriate under the present circumstances of this case (and if so, the proposed logistics for such a view).*
2. *The number, job descriptions and work sites of China Shipping employees who would be discharged or furloughed in the event shipping activities are suspended by the court.*
3. *The number, job descriptions and work sites of employees of independent contractors of China Shipping who would be discharged or furloughed in the event shipping activities are suspended by the court.*
4. *Whether there are facilities A) elsewhere in the Port of Los Angeles, or B) elsewhere on the west coast of the United States sufficient to absorb terminal operations in the event shipping activities at the China Shipping Terminal are suspended by the court.*
- 5A. *Why the City has not filed with this court a return to the Writ of Mandate entered by this court on July 12, 2022 (ROA 160), establishing that it has set aside its certification of the SEIR, as well as all related project approvals, as ordered by this court.*
- 5B. *Why petitioners have not brought to the court's attention the City's failure to file with this court a return to the Writ of Mandate entered by this court on July 12, 2022 (ROA 160), establishing that it has set aside its certification of the SEIR, as well as all related project approvals, as ordered by this court (despite the absence of any appeal by the City or RPI).*
6. *What is the present schedule for the preparation and consideration of a new supplemental or subsequent environmental review document for the China Shipping Terminal?*
- 7A. *What is the present status of the City's actions (if any) to correct the deficiencies in enforcement identified by this court on June 27, 2022 (ROA 154)?*
- 7B. *What is the present status of the City's actions (if any) to correct the two additional deficiencies in enforcement identified by the Court of Appeal?*
8. *What is the present status of implementation of the specific mitigation measures duly adopted in the 2019 SEIR (or, where relevant, the 2008 EIR measures reinstated by this court in June of 2022)?*
9. *What is the present status of the implementation of the two additional specific mitigation measures identified by the Court of Appeal?*
10. *As the Court of Appeal noted (Slip Op. at 74-75), China Shipping is obligated by the Lease's terms to comply with the mitigation measures set forth in any duly adopted environmental document, as the Lease requires China Shipping to "at all times, in its use and occupancy of the premises and in the conduct of its operations thereon, comply with all laws, statutes, ordinances, rules and regulations applicable thereto,*

enacted and adopted by federal, state, regional, municipal or other governmental bodies, or departments or offices thereof." What is the current status of the City's efforts to enforce this provision of the Lease? What specific efforts, if any, has China Shipping made since June of 2022 and December of 2023 to bring itself into compliance with the Lease?

11. Describe in detail what operational changes, if any, have been made at the China Shipping Terminal A) since this court's decision on June 27, 2022 (ROA 154); and B) since the filing of the opinion of the Court of Appeal on December 29, 2023.

In addition to the foregoing, petitioners were ordered forthwith to prepare and submit an amended writ of mandate and judgment, consistent with the Court of Appeal's opinion. ROA 188.

The City and RPI responded thoroughly to the OSC, addressing (at least in part) all of the foregoing questions. ROA 192-202. Petitioners replied. ROA 204-206. The two petitioner groups submitted similar (but still competing) versions of a proposed writ and judgment. The City objected at length to both versions. ROA 203. The court heard helpful argument from the parties.

Having considered the above submissions and the arguments of counsel, the court hereby spreads the mandate of the Fourth District Court of Appeal, Div. 1 as follows:

1. The evidence overwhelmingly established that shutting down the China Shipping Terminal (aka Permit 999) would be an economic disaster for the Port; for members of the longshoreman's and associated clerk's unions; for drayage, rail and trucking contractors reliant on shipping activities; and for shippers reliant on the supply chain that starts at factories in Asia and ends in the hands of Americans in California and throughout the United States. Moreover, it is more than arguable that shutting down Permit 999 would also have a net negative environmental impact due to increased air emissions from transportation disruptions. So persuasive was the case against suspension of operations at Permit 999 that even petitioners -- who have not agreed with the Port on very much over the last decade plus -- ended up not seeking such relief.

On the other hand, it is crystal clear that the mere spectre of such a shutdown -- created by the Court of Appeal's decision and this court's OSC -- was the motivating factor behind the City's and China Shipping's decision to finally get moving on Amendment No. 5 to Permit 999.

The court declines to suspend operations at China Shipping Terminal (aka Permit 999) *at this time*.

2. The court determines to exercise its discretion to sign the proposed judgment and writ offered by AQMD and the Intervenor, and to reject the alternative version offered by the Community Petitioners. The court perceives no need for a special master *at this time*, as the court is presently available to undertake the role envisioned by the Court of Appeal (and expects to be available through 2025).

3. The City's objections to the AQMD/Intervenor judgment/writ are overruled. The court declines to sign the City's proposed judgment and writ.

4. The site visit pursuant to CCP section 651 (to which all parties have consented) is deemed by the court to be important to its ongoing oversight of this matter (the court having retained jurisdiction). The matters to be viewed cannot practicably be viewed in the courtroom. The CCP section 651 view is hereby set for June 24, 2024. The parties are ordered to agree upon an itinerary for that day, and arrange for a van or bus (at respondent's expense) to transport the entire entourage together. These

arrangements (which should include visits to the neighborhood areas indicated in petitioners' briefing) must be provided to the court, in writing, by June 14, 2024 (so the court may make hotel reservations). The itinerary must have, as its starting point, a convenient and accessible place where all involved may securely park their personal vehicles for the day. Each party is limited to two counsel and one non-attorney on the bus/van, so as to avoid making the entourage too unwieldy. If the parties wish the presence of a court reporter, they may order one at their expense. The court will not take sworn testimony during the view.

5. The court hereby sets a status hearing for August 23, 2024 at 9:00 a.m. in Dept. 2004.

**IT IS SO ORDERED.**

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\*The court is aware of the City's unsuccessful depublication request, Case No. S284181. The petition was denied on 4/24/24. The remittitur issued on May 6, 2024. ROA 191.

The Status Conference (Civil) is scheduled for 08/23/2024 at 09:00AM in Department 2004.



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Judge Timothy Taylor