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Clerk of the Superior Court
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10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
11
12 COUNTY OF SAN DIEGO – CENTRAL DIVISION

13 NATURAL RESOURCES DEFENSE
14 COUNCIL, INC., SAN PEDRO AND
15 PENINSULA HOMEOWNERS
16 COALITION, SAN PEDRO PENINSULA
17 HOMEOWNERS UNITED, INC., EAST
18 YARD COMMUNITIES FOR
19 ENVIRONMENTAL JUSTICE, and
20 COALITION FOR CLEAN AIR, INC., non-
21 profit corporations

22 Petitioners/Plaintiffs,

23 v.

24 CITY OF LOS ANGELES, PORT OF LOS
25 ANGELES, and LOS ANGELES BOARD OF
26 HARBOR COMMISSIONERS, public
27 entities

28 Respondents/Defendants.

Case No. 37-2021-00023385-CU-TT-CTL

Assigned For All Purposes To:
Hon. Timothy Taylor
Department: 2004

**[PROPOSED] ORDER ENFORCING
WRIT**

Actions Filed: September 16, 2020
Trial Date: June 24, 2022

1 CHINA SHIPPING (NORTH AMERICA)
2 HOLDING CO., LTD, a Delaware
3 corporation; CHINA COSCO SHIPPING
4 CORPORATION LIMITED, a corporation;
5 COSCO SHIPPING (NORTH AMERICA),
6 INC., a California corporation; WEST BASIN
7 CONTAINER TERMINAL LLC, a Delaware
8 corporation; and DOES 1 THROUGH 20,
9 inclusive

10 Real Parties in Interest.

11 AND CONSOLIDATED CASE.

1 **[PROPOSED] ORDER ENFORCING WRIT**

2 On July 15, 2022, this Court, the Honorable Timothy Taylor presiding, entered judgment
3 (“Judgment”) granting in part and denying in part the Petition for Writ of Mandate, Complaint for
4 Declaratory and Injunctive Relief of Petitioners Natural Resources Defense Council, San Pedro
5 and Peninsula Homeowners Coalition, San Pedro Peninsula Homeowners United, East Yard
6 Communities for Environmental Justice, and Coalition for Clean Air; the Petition for Writ of
7 Mandate and Complaint for Declaratory Relief of Petitioner South Coast Air Quality
8 Management District; and the Petition for Writ of Mandate in Intervention of Intervenors the
9 People of the State of California, acting by and through Attorney General Rob Bonta, and the
10 California Air Resources Board (collectively, “Petitioners and Intervenors”), against Respondents
11 the City of Los Angeles, Los Angeles City Council, Port of Los Angeles, City of Los Angeles
12 Harbor Department, and Los Angeles Board of Harbor Commissioners (collectively,
13 “Respondents”) and Real Parties in Interest China Shipping (North America) Holding Co. Ltd.,
14 China COSCO Shipping Corporation Limited, COSCO Shipping (North America), Inc.
15 (collectively, “China Shipping”) and Real Party in Interest West Basin Container Terminal LLC
16 (collectively, with China Shipping, “Real Parties”). Petitioners and Intervenors, Respondents and
17 Real Parties are referred herein as “Parties.”

18 Having reviewed the administrative record, the briefs and papers submitted by counsel,
19 and the arguments of counsel, on June 27, 2022, the Court issued a ruling on the merits.

20 Petitioners Natural Resources Defense Council, San Pedro and Peninsula Homeowners
21 Coalition, San Pedro Peninsula Homeowners United, East Yard Communities for Environmental
22 Justice, and Coalition for Clean Air and Petitioner South Coast Air Quality Management District
23 filed Notices of Appeal of this Court’s Judgment. On December 29, 2023, the Court of Appeal,
24 Fourth Appellate District, Division One, issued its Opinion (“Opinion”). The Opinion reversed in
25 part the Ruling and directed that it be modified as set forth in the Opinion. The remittitur issued
26 on May 6, 2024.

27 On May 24, 2024, the Court entered an amended judgment (“First Amended Judgment”)
28 and amended writ (“First Amended Writ”) in this case, and on May 31, 2024, Respondents were

1 personally served with the First Amended Writ.

2 On July 15, 2024, Respondents filed an initial return to the First Amended Writ ("Initial
3 Return").

4 On July 30, 2024, and January 30, 2025, Respondents filed their first and second status
5 reports, respectively, pursuant to the First Amended Writ.

6 On April 1, 2025, Petitioners and Intervenors filed a motion to enforce the First Amended
7 Writ. The Court held a hearing on the motion on May 2, 2025, and on that same day, issued the
8 ruling attached as **Exhibit A**.

9 ACCORDINGLY, IT IS HEREBY ORDERED that the motion to enforce is granted in
10 part. The First Amended Judgment entered in this action on May 24, 2024, is enforced as follows
11 in this order enforcing the writ ("Order"):

12 A. The First Amended Writ, issued by this Court on May 24, 2024, and ordering
13 Respondents to take the certain actions the Court has determined necessary under Public
14 Resources Code Section 21168.9 to comply with the provisions of the California Environmental
15 Quality Act ("CEQA"), remains in full force and effect. This Order interprets and takes steps, as
16 are necessary and proper, to enforce the First Amended Judgment and the First Amended Writ.
17 The First Amended Writ shall be implemented and interpreted pursuant to the provisions of this
18 Order. This Order shall be enforceable by any Party by application to the Court to enforce
19 compliance herewith, and for violations hereof, if any, including through enforcement of the First
20 Amended Writ.

21 B. As established by the Initial Return, Respondents have complied with Paragraph 1
22 of the First Amended Writ, which directed them to file an initial return within 45 days of being
23 served, showing that they had:

- 24 1. Entered into and adopted an amendment ("Permit Amendment") to Permit
25 999 (the "Permit") for the Berths 97-109 China Shipping Terminal ("China
26 Shipping Terminal") in the manner required by the City of Los Angeles
27 Charter. The Permit Amendment shall implement and make fully
28 enforceable against the permittee/tenant the mitigation measures in the

1 2008 Environmental Impact Report for the Berths 97-109 [China Shipping]
2 Container Terminal Project (“2008 EIR”), as modified by the 2019
3 Supplemental Environmental Impact Report for the Berths 97-109 [China
4 Shipping] Container Terminal Project (“2019 SEIR”), the Ruling on the
5 Merits issued by the Court on June 27, 2022 (“Ruling”), and the Opinion of
6 the Court of Appeal, Fourth Appellate District, Division One issued on
7 December 29, 2023 (“Opinion”) (collectively, “Mitigation Measures and
8 Lease Measures”), specifically identified as:

- 9 i. 2008 EIR MM AQ-9, Alternative Marine Power;
- 10 ii. 2008 EIR MM AQ-10, Vessel Speed Reduction Program;
- 11 iii. 2008 EIR MM AQ-17 as it applies to a 1-year electric yard
12 tractor pilot project; and
- 13 iv. All measures identified in the 2008 EIR Mitigation
14 Monitoring and Reporting Program, listed at pages 6528–
15 6597 of the administrative record in this action, as modified
16 by the 2019 SEIR Mitigation Monitoring and Reporting
17 Program, listed at pages 10528–10536 of the administrative
18 record in this action, except the measures described in
19 subsections i–iii above (which have been reinstated by the
20 Ruling and Opinion), or measures that Respondents can
21 prove are fully completed and thus moot (e.g., construction
22 that has been completed).

- 23 2. Set aside certification of the 2019 SEIR, as well as the related project
24 approvals referred to on pages 8–25 of the administrative record in this
25 action.

26 C. The status reports to be filed by Respondents with the Court in compliance with
27 Paragraph 4 of the First Amended Writ shall comply with the following requirements:

- 28 1. For each continuing Mitigation Measure and Lease Measure, the status

1 report shall state whether Respondents and/or Real Parties were “in
2 compliance” or “not in compliance” during the applicable reporting period.
3 The statement “not in compliance,” standing alone, shall not be construed
4 as an admission by the City that it has willfully disobeyed the Amended
5 Judgment (though it may be considered as evidence of willful
6 disobedience). The status reports do not have to include any Mitigation
7 Measures or Lease Measures that have been identified as fully completed
8 in a prior status report. If the Port discovers that a Mitigation Measure or
9 Lease Measure that was previously identified as having been fully
10 completed is not, in fact, fully completed, the Port must resume reporting
11 on that measure.

12 2. For MM AQ-9, Alternative Marine Power, the status report shall include:

- 13 a. A list of all vessel visits to the China Shipping Terminal during the
14 applicable reporting period, including vessel name, type, and
15 operator/owner; berth visited; arrival date and time; departure date
16 and time; shore power connection and disconnection meter
17 readings; shore power connection start and end times; and any
18 exceptions claimed.
- 19 b. As described in **Exhibit B**, all information necessary to substantiate
20 any claimed exception to MM AQ-9, including but not necessarily
21 limited to any information submitted to or received from the
22 California Air Resources Board regarding the claimed exception.

23 3. For MM AQ-10, Vessel Speed Reduction Program, the status report shall
24 include:

- 25 a. A list of vessels that departed or arrived at the China Shipping
26 Terminal during the applicable reporting period;
- 27 b. Listed speed in knots for each vessel at the following intervals, in
28 nautical miles, from Point Fermin: 10nm, 15nm, 20nm, 25nm,

30nm, 35nm, 40nm;

- c. Indication whether each vessel listed complied with MM AQ-10 for each departure and/or arrival within the 40nm limit;
- d. Indication of compliance with MM AQ-10 within the 40nm limit, as a percentage of all vessel trips during the applicable reporting period;
- e. Detailed description, including supporting documentation, of any actions taken pursuant to the WBCT Terminal Tariff to address non-compliance with MM AQ-10-within the 40nm limit during the applicable reporting period.

4. For MM AQ-15 and AQ-17, Cargo-Handling Equipment, the status report shall include, in substantially similar format:

- a. A summary spreadsheet identifying all cargo-handling equipment that is operated at the China Shipping Terminal, regardless of whether that equipment is operated only full-time or part-time at the Terminal. The summary spreadsheet shall include at least the following information for cargo-handling equipment of each equipment/fuel type: the total number of units; the number of units belonging to each model year; the number of units purchased in a year or pending purchase in a future year starting from 2024 through the year in which the Port achieves compliance with MM AQ-15 and MM AQ-17; and the number of units that are "in compliance" during the reporting period at issue, which shall include all units that satisfy the technical specifications set forth in MM AQ-15 or MM AQ-17, as applicable (including all units for which required replacements are still timely pending).
- b. A summary spreadsheet for each type of equipment operated at the China Shipping Terminal, including the following information for

each unit of that equipment type operated at the China Shipping Terminal: equipment tag number, model year, chassis VIN, engine make, engine year, engine serial number, engine family name, manufacturer, model, and fuel type.

- c. Invoices for all units of cargo-handling equipment purchased to satisfy MM AQ-15 and MM AQ-17, respectively: payment invoices that include all units that have been purchased; and final invoices that list the same units by serial number with a detailed description of the technical specifications.

5. If Respondents supplement their status reports to support their compliance with this Order and First Amended Writ, any supplemental materials must be served on all parties, posted online, and signed under penalty of perjury in the same manner as required for the status reports as detailed in the First Amended Writ.

D. Under Public Resources Code Section 21168.9(c), the Court does not direct Respondents to exercise their lawful discretion in any particular way. Nothing in this Order, the First Amended Judgment, or the First Amended Writ should be construed as requiring Respondents to take any particular action other than as specifically set forth herein.

E. This Court expressly retains jurisdiction over this matter to make such further orders as may be necessary and appropriate to ensure Respondents' and Real Parties' full compliance with CEQA, and with the terms of this Order, the First Amended Judgment, and the First Amended Writ.

IT IS SO ORDERED.

Date: May 15, 2025



The Honorable Timothy Taylor

Exhibit A



FILED
San Diego Superior Court
MAY 02 2025
Clerk of the Superior Court
By: T. Crandall, Deputy

Ruling on Petitioners' Motion Under CCP Section 1097 (MM AQ-9)

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

Argued and submitted: May 2, 2025, 9:00 a.m., Dept. 2004

1. Background and Procedural Posture.

This is a CEQA case involving the China Shipping Terminal at the Port of Los Angeles. The court incorporates its own 2022 merits decision (ROA 154), as well as 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. 5th 1176), remanding the case to this court to exercise its discretion to fashion an appropriate remedy in the first instance.

Following the spreading of the appellate mandate, the court has, among other things: a) set an OSC regarding why port activities at the China Shipping Terminal should not be suspended (ROA 185); b) decided (after full briefing) not to suspend those operations (ROA 210); c) signed an amended writ and judgment (ROA 212, 217); d) conducted an extensive site visit (ROA 225); reviewed respondent's initial return to the writ (ROA 227-236) and petitioners' response thereto (ROA 244); e) worked up a fully briefed attorneys' fee motion (ROA 226); and f) continued to monitor respondent's compliance via review of further status reports and objections thereto (ROA 300, 304-305, 312, 320, 351). The court held several status conferences while a glacial meet and confer process went forward among the parties.

The March 7, 2025 status conference was set at the conclusion of the January 17, 2025 status conference, at which the parties reported they were close to agreement on a second amended judgment. The parties appeared remotely at the March 7 status conference having already submitted a proposed second amended judgment. However, during the hearing it became clear that the parties were still far apart as to MM AQ-9 (AMP). The City withdrew its consent to the second amended judgment, and the court did not sign it. ROA 333, 349.

The court informed the parties of its impending retirement, and noted that the disagreements regarding MM AQ-9 (AMP) must be resolved before May 30, 2025. A further status conference was set for April 4, 2025. ROA 333. The court informed the parties if they had not reached

agreement by April 4, the court would expect petitioners to have secured a date to present an affidavit in support of an OSC re contempt. *Ibid.*

No agreement was reached. In lieu of pursuing a finding of contempt, petitioners and intervenors filed, on April 1, a “Motion to Enforce Under CCP Section 1097.” ROA 346-347. The City filed opposition, to which Cosco and West Basin filed joinders. ROA 353-357. Petitioners/intervenors filed reply. ROA 360. The court reviewed the moving, opposition and reply papers, and published a tentative ruling on April 28, ROA 361. The court heard spirited argument on May 2, 2025, and took the motion under submission. The court now decides the motion.

2. Applicable Standards.

A. CCP Section 1097 provides:

If a peremptory mandate has been issued and directed to an inferior tribunal, corporation, board, or person, and it appears to the court that a member of the tribunal, corporation, or board, or the person upon whom the writ has been personally served, has, without just excuse, refused or neglected to obey the writ, the court may, upon motion, impose a fine not exceeding one thousand dollars. In case of persistence in a refusal of obedience, the court may order the party to be imprisoned until the writ is obeyed, and **may make any orders necessary and proper for the complete enforcement of the writ.**

This provision was enacted in 1872 as part of the Field Code, and has been amended only once (in 2016, non-substantively). Petitioners/intervenors invoke the last (highlighted) clause of the statute. Justice O’Rourke has observed that the Court of Appeal will “review the trial court’s order under section 1097 of the Code of Civil Procedure, which permits the court to ‘make any orders necessary and proper for the complete enforcement of the writ,’” by focusing on the respondent’s “response to the writ and the trial court’s assessment of that response.” *San Diego Unified Port Dist. v. California Coastal Com.*, 27 Cal. App. 5th 1111, 1128 (2018), citing *Brown v. California Unemployment Insurance Appeals Board*, 20 Cal.App.5th at p. 1114; *Robles v. Employment Development Department* (2015) 236 Cal.App.4th 530, 546; *Los Angeles Internat. Charter High School v. Los Angeles Unified School District*, 209 Cal.App.4th at p. 1355 (“*Charter High School*”); and *City of Carmel-by-the-Sea v. Board of Supervisors of Monterey County*, 137 Cal.App.3d 964, 971-971.

B. The City contends the court lacks jurisdiction to amend the judgment (as prayed by the moving parties). Petitioners/intervenors respond the court can avoid this issue by just making an “order” instead of a judgment. Initially it did not seem to the court that the City, in raising this side dispute, had considered how it may affect its appellate rights. A common law exception to the one final judgment rule is

“the collateral order doctrine, under which some interim orders are deemed appealable “judgments” because they are essentially the same as a final judgment. (See *Curtis v. Superior Court* (2021) 62 Cal.App.5th 453, 464, 276 Cal.Rptr.3d 676.) To be appealable, a collateral order must satisfy three elements: the order must (1) finally determine (2) a matter collateral to the litigation and (3) require the payment of money or performance of an act. (*Marsh v. Mountain Zephyr, Inc.* (1996) 43 Cal.App.4th 289, 297-298, 50 Cal.Rptr.2d 493; Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2020) ¶ 2:77.)”

Reddish v. Westamerica Bank, 68 Cal. App. 5th 275, 278, 283 Cal. Rptr. 3d 398, 400 (2021). Under this rule, if an order is not a “collateral order” (and thus not appealable), the Court of Appeal would have to dismiss any appeal the City might take:

"Civil cases in California are governed by the "one final judgment" rule, which "prohibits review of intermediate rulings by appeal until final resolution of the case." (*Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 697, 107 Cal.Rptr.2d 149, 23 P.3d 43.) The rule is a bedrock principle of appellate practice, codified in Code of Civil Procedure, section 904.1. (*In re Baycol Cases I & II* (2011) 51 Cal.4th 751, 756, 122 Cal.Rptr.3d 153, 248 P.3d 681.) The rationale for the rule "is that piecemeal disposition and multiple appeals in a single action would be oppressive and costly, and that a review of intermediate rulings should await the final disposition of the case." (*Id.* at p. 756, 122 Cal.Rptr.3d 153, 248 P.3d 681.) Courts should not recognize exceptions to the one final judgment rule unless "clearly mandated." (*Id.* at p. 757, 122 Cal.Rptr.3d 153, 248 P.3d 681.)

Reddish, supra at 277 (footnote omitted). Neither side's briefing cited the court to a case resolving the tension between CCP section 1097, which contains no 75 day time limitation, and sections 629, 663, 663a, and 659, which do. The court raised this during the May 2 argument, and the City cited *Charter High School, supra*, 209 Cal.App.4th at p. 1354: "The order following the hearing into the adequacy of the [respondent's] return on the writ is appealable as an order enforcing the judgment."

C. As already noted, the Court of Appeal ordered the undersigned to exercise its discretion to fashion an appropriate remedy in the first instance. That discretion "must be exercised within the confines of the applicable legal principles." (*Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 773.) Judicial discretion "is not a whimsical, uncontrolled power, but a legal discretion, which is subject to the limitations of legal principles governing the subject of its action, and to reversal on appeal where no reasonable basis for the action is shown." (9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 364, p. 420.) "The legal principles that govern the subject of discretionary action vary greatly with context. [Citation.] They are derived from the common law or statutes under which discretion is conferred." (*City of Sacramento v. Drew* (1989) 207 Cal.App.3d 1287, 1297-1298.) The reviewing court must consider the legal principles and policies that should have guided the trial court's actions to determine if it abused its discretion. (See *People v. Carmony* (2004) 33 Cal.4th 367, 377.)

3. Discussion and Rulings.

A. The amended writ of mandate provides, in relevant part:

4. Within 60 days of service of the Writ and continuing every six months until the final return, Respondents shall file reports with the Court detailing the status of the implementation of all mitigation Measures and Lease Measures in the Permit.

...b. The status reports shall be signed under penalty of perjury by the appropriate officials/representatives on behalf of Respondents and Real Parties. The reports shall include 1) a list of all Mitigation Measures and Lease Measures in the Permit and the Permit Amendment, 2) a detailed explanation of the status of implementation of those measures, and 3) supporting evidence proving progress towards implementation (e.g., logs, purchase orders, invoices, photographs, etc.). **If any Mitigation Measure or Lease Measure is not being fully implemented as required by the Permit or Permit Amendment, Respondents must explain why and describe the actions being taken to reach compliance with the Permit or Permit Amendment.**

(ROA 212, ¶ 4, bold type added.)

B. The Mitigation Measure at issue in this motion is MM AQ-9, relating to shore power:

MM AQ-9: Alternative Maritime Power (AMP).

China Shipping ships calling at Berths 97-109 must use AMP at the following percentages while hoteling in the Port: ***

- January 1, 2011, and thereafter: 100 percent of ship calls

Additionally, by 2010, all ships retrofitted for AMP shall be required to use AMP while hoteling at a 100 percent compliance rate, with the exception of circumstances when an AMP-capable berth is unavailable due to utilization by another AMP-capable ship.

AR 6561.

C. In her January 30, 2025 sworn declaration (ROA 320), Lisa Ochsner, the City's Marine Environmental Manager,* testified as follows:

"Mitigation Measure AQ-9 Alternative Maritime Power (AMP). The status of this measure is **in compliance** for this reporting period. This information is derived from WBCT's reporting to the California Air Resources Board (CARB) and the Department's review of documentation regarding the exceptions claimed by the vessels calling at the terminal. (See Exhibit B, 2008 MM AQ-9.) According to WBCT, **100% shore power or an equivalent CARB approved emission control strategy (CAECS) was utilized for all vessels during the reporting period from July 2, 2024 through December 31, 2024. Of the fifteen (15) "exceptions" in the CARB report: four (4) were for safety and emergency events including power outages weather, and a vault explosion; three (3) were for vessel incident events including problems with a grounding switch, soaked electrical cables, and disconnecting early for the sock barge to be used on a tanker; three (3) were for research events; and five (5) were for vessel commissioning, which were all ultimately successful and used shore power after the commissioning. All 15 of these "exceptions" are counted in the 100% compliance rate because these vessels either initially or eventually used shore power or CAECS during the vessel visit as evidenced by the documentation provided with this report.**"

The table of Monitoring Measures and Lease Measures appended to the Ochsner declaration repeats at page 9 the assertion that the City was "IN COMPLIANCE" with MM AQ-9. This is the "nub" of the present dispute. In summary, the City contends it is in compliance as Ms. Ochsner reported, while petitioners/intervenors contend 1) the language quoted immediately above in bold type presumes exceptions never contemplated by MM AQ-9; and 2) Ms. Ochsner should have reported that MM AQ-9 is not "being fully implemented" and then "explain[ed] why and describe[d] the actions being taken to reach compliance with" MM AQ-9.

D. After careful consideration, the court concludes the petitioners/intervenors have the better side of the debate, and exercises its discretion to grant the motion in part. While isolated emergencies and equipment failure deviations were "baked into" the 2008 EIR (AR 5834),** MM AQ-9 does not provide an exception for "an equivalent*** CARB approved emission control strategy (CAECS)." And MM AQ-9 does not provide an exception for "research events." As to MM AQ-9, the City's "response to the writ," at least as of January 30, has been to conflate compliance with the writ (which requires compliance with a 2008 Monitoring Measure) and compliance with a 2020 CARB at-berth regulation. While some deference to the lead agency's interpretation of the mitigation measure may be appropriate, not so here where the City's track record led this court to observe that the City had "committed a profound violation of CEQA." 98 Cal. App. 5th at 1231. Not so here where the Court of Appeal determined that the City led this court into error by resisting a more robust remedial regime. *Ibid*. Not so here where there is nothing in MM AQ-9 suggesting it left room for a swing from 2-3% non-compliance to 22% non-compliance (as petitioners contend, with ample support, the January 30 reporting reflects). And not so here where the City's interpretation "allows the Port to continue

its illegal operation of the [T]erminal without enforceable mitigation measures” in place.” 98 Cal. App. 5th at 1231.

The City cries “foul” by pointing out that CARB is both the enforcer of the 2020 at-berth regulation and an intervenor seeking relief in this motion. The court can understand that Ms. Ochsner might feel “whipsawed” by this dual role of CARB. But there is a proper cure for this: the City may, in the new SEIR it is preparing, propose to weave the at-berth regulations into the monitoring measure, and then put that new environmental document out for comment and otherwise invite public participation. Only then will the City’s hoped-for monitoring measure be part of a “document of accountability,” and only then will the public “know the basis on which its responsible officials either approve or reject environmentally significant action.” 98 Cal. App. 5th at 1200. What the City may not do is what it proposes to do here: unilaterally engraft the 2020 CARB at-berth regulation into MM AQ-9 as written, and then blithely claim compliance with the latter. And this effort is particularly disconcerting given the City’s position less than one year ago:

Mr. Kulkarni: “What the Court did here was basically the Port had attempted to modify MM AQ-9 in the SEIR. The Court found there was not substantial evidence to support that modification. What the Port has decided to do here, and as effectuated in the Fifth [Lease] Amendment, is **MM AQ-9 would default back to the original measure from the 2008 SEIR**. ...And because the **Port has decided not to modify the 2008 MM AQ-9**, therefore those arguments challenging are also moot now. So it makes no sense, you Honor, if you’re reverting back to ... the 2008 measure, which is for at-berth emissions, there’s absolutely no need to reanalyze anything because **we’re doing exactly what the original document said.**”

5/24/24 RT, 34:19-25, 35:11-18 (**bold type added**).

Contrary to these representations, the January 30 reporting reflects that the City is not doing exactly what the 2008 monitoring measure said, and that the City is attempting to modify MM AQ-9 by watering it down with exceptions never contemplated in 2008. And contrary to Ms. Ochsner’s January 30 declaration, the court’s assessment is that the City was not in compliance with MM AQ-9 and the Amended Judgment on January 30, 2025 because the reporting on that date was not accurate.

E. Remedy: The court will sign an order enforcing the writ along the lines of the amended judgment heretofore rejected (ROA 349), with one interlineation on page 6, lines 6-7. After the phrase “...during the applicable reporting period” the following must be added: “The statement ‘not in compliance,’ standing alone, shall not be construed as an admission by the City that it has willfully disobeyed the Amended Judgment (though it may be considered as evidence of willful disobedience).” The court orders this change because the court has formed the impression that doing so will enhance the candor with which the City reports the at-berth shore power connections of vessels hoteling at the China Shipping Terminal.

Petitioners/intervenors are ordered forthwith to submit an order enforcing the writ consistent with the foregoing for signature by the court. Further, Ms. Ochsner must forthwith**** submit to the court (and otherwise publish as required by the writ) a revised version of her January 30, 2025 declaration, consistent with the foregoing rulings. The court declines the invitation of the petitioners/intervenors to require Ms. Ochsner to revise the July 30, 2024 status report. Given the passage of time since the latter report, and the extensive back-and-forth between the parties since then, and the December update to the June 30 report, the court perceives little to be gained by imposing such a make-work exercise. Further, to the extent the original moving papers asked

the court to enter the previously rejected "Proposed Stipulated Second Amended Judgment," the motion is denied.

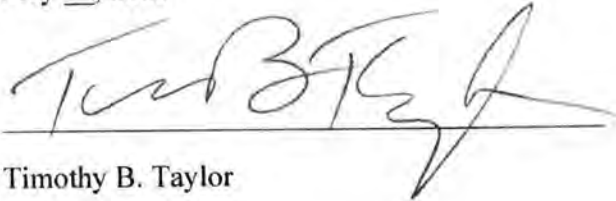
The court concludes that the foregoing orders are necessary and proper for the complete enforcement of the writ.

Petitioners'/intervenor's request for attorneys' fees may be the subject of a future motion if not resolved by negotiation as the previous fee motions were.

The court thanks counsel for their work on this matter over the last four years.

IT IS SO ORDERED.

May 2, 2025

A handwritten signature in black ink, appearing to read "Timothy B. Taylor", written over a horizontal line.

Timothy B. Taylor

Judge of the Superior Court

*The same declaration recites that Ms. Ochsner is responsible for overseeing "environmental compliance of Port tenant leases and permits, including but not limited to, mitigation measures and lease measures implemented through Mitigation Monitoring and Reporting Programs, environmental conditions imposed through project approvals, and other environmental requirements contained in tenant Environmental Compliance Plans."

**Petitioners/intervenor's also take issue with the City's "vessel commissioning" exceptions. Any fair-minded person who has visited the China Shipping Terminal (as the court has), will understand that connecting a massive, complex ocean-going vessel to shore power is not at all like plugging in a toaster or a blender in a suburban home.

***Petitioners/intervenor's vigorously dispute that it is "equivalent." ROA 346 at 14-16. The City does not convincingly meet this argument.

****The revised declaration and revised Order Enforcing Writ are due in Dept. 2004 by noon on May 14, 2025. The editing of the latter must also remove any suggestion that it is an amended judgment.

Exhibit B

Exhibit B - Interpreting and Reporting Compliance with MM AQ-9 (Alternative Maritime Power)

I. Text and Background of MM AQ-9

The text of MM AQ-9 states:

“China Shipping ships calling at Berths 97-109 must use AMP at the following percentages while hoteling in the Port:

- ♦ January 1 to June 30, 2005: 60 percent of total ship calls (ASJ Requirement)
- ♦ July 1, 2005: 70 percent of total ship calls (ASJ Requirement)
- ♦ January 1, 2010: 90 percent of ship calls
- ♦ January 1, 2011, and thereafter: 100 percent of ship calls

Additionally, by 2010, all ships retrofitted for AMP shall be required to use AMP while hoteling at a 100 percent compliance rate, with the exception of circumstances when an AMP-capable berth is unavailable due to utilization by another AMP-capable ship.”

The 2008 Mitigation Monitoring and Reporting Program (“MMRP”) provides that the Real Parties (China Shipping) shall submit bi-annual compliance reports to Respondents documenting compliance with MM AQ-9.

In *NRDC et al. v City of Los Angeles et al.*, San Diego County Superior Court Case No. 37-2021-00023385-CU-TT-CTL, the Court recognized that MM AQ-9, as discussed in the 2008 EIR, also accounts for “emergency” situations and “certain events such as equipment failure [that] may mean less than 100% of ships would comply with this measure in certain years.” (June 22, 2022, Minute Order at p. 10).

Sections III and IV, below, identify the only applicable exceptions to MM AQ-9 for the purpose of determining and reporting compliance with MM AQ-9 in Respondents’ status reports required by the First Amended Writ. As set forth in detail below, where MM AQ-9 lacks specificity, this document incorporates some provisions from the California Air Resources Board’s (CARB’s) 2020 At-Berth Regulation, California Code of Regulations, Title 17, section 93130, et seq. (At-Berth Regulations). The references below to the At-Berth Regulations are specific to the current version, adopted in 2020.

Pursuant to Paragraph C.1 of the Order Enforcing the Writ, if Respondents report an exception not identified in Sections III and IV, below, in a status report for an applicable reporting period, the status report will state “not in compliance” for MM AQ-9 for that reporting period. Notwithstanding the foregoing, reporting “not in compliance,” in a status report shall not be construed as a concession of contempt by Respondents of the First Amended Judgment or First

Amended Writ.

II. Definitions

1. "China Shipping ships" shall be interpreted to include all vessels owned, chartered, or operated by China Shipping.
2. "Hoteling": The term "hoteling" is undefined in MM AQ-9. To define this term, the At-Berth Regulation provisions regarding connection and disconnection times shall apply; that is, vessels must begin controlling emissions with AMP within two hours after "Ready to Work" (as defined in California Code of Regulations, Title 17, section 93130.2, subdivision (b)(63)), and must not cease controlling emissions with AMP sooner than one hour before "Pilot on Board" (as defined in California Code of Regulations, Title 17, section 93130.2, subdivision (b)(58)). "Ready to Work" means that the vessel is tied to the berth, the gangway has been lowered with netting down, and all government authorities with jurisdiction over the vessel visit have cleared the vessel. "Pilot on Board" means that the vessel's pilot has boarded the vessel to assume navigational control to prepare for vessel departure.
3. "Vessel arrival" means the date and time that a vessel is initially tied to a berth with first line. (Cal. Code Regs., tit. 17, § 93130.2, subd. (b)(83).)
4. Other terms are defined as appropriate in the relevant provisions throughout this document.

III. Express Exceptions in the Text of MM AQ-9

Applicability: MM AQ-9 contains two express exceptions:

1. Non- "China Shipping ships" that are not "retrofitted for AMP."
2. Non- "China Shipping ships" that experience "circumstances when an AMP-capable berth is unavailable due to utilization by another AMP-capable ship."

Reporting: As part of the status report for each applicable period, Respondents shall:

- Identify, and provide documentation to support, which visits are by vessels that are owned, chartered, or operated by China Shipping.
- Provide documentation substantiating that the vessel was a non-China Shipping ship and was "not retrofitted for AMP" for any vessel visit under the first express exception above.
- Provide documentation substantiating that the vessel was a non-China Shipping ship and the existence of "circumstances when an AMP-capable berth is unavailable due to utilization by another AMP-capable ship" for any vessel visit under the second express

exception above.

IV. Other Applicable Exceptions

In addition to the express exceptions set forth above, consistent with the Court's June 22, 2022, Minute Order and the 2008 EIR, MM AQ-9 shall be interpreted to incorporate the three exceptions described below, which are based on the At-Berth Regulations. MM AQ-9 incorporates the At-Berth Regulations only to the extent the regulation is expressly referenced, identified, or quoted below.

1. Safety & Emergency Events:

- Applicability: The AMP requirement in MM AQ-9 does not apply during any portion of a vessel visit that qualifies as a "safety and emergency event" under California Code of Regulations, Title 17, section 93130.8, subdivision (a). "Safety and emergency event" is defined as "an event where a responsible official reasonably determines that compliance with this [mitigation measure] would endanger the safety of the vessel, crew, cargo, passengers, terminal, or terminal staff because of severe weather conditions, a utility event, or other extraordinary reasons beyond the control of the terminal operator or vessel operator." (Cal. Code Regs., tit. 17, § 93130.2, subd. (b)(70).) All safety and emergency events are subject to review and audit by CARB, per the At-Berth Regulation. This exception applies only as long as the event occurs and only to the extent necessary to secure the safety of the vessel, its crew, its cargo, or its passengers and provided that the vessel master: (1) Takes all reasonable precautions after the conditions necessitating the exception have ended to avoid or minimize repeated claims of exception under this subsection; and (2) Includes with the reporting requirement of California Code of Regulations, Title 17, section 93130.7, subdivision (e)(4) all documentation necessary to establish the conditions necessitating the safety and emergency event exception and the date(s), local time, and location. All required documentation must be in the English language.
- Reporting: Respondent must submit as part of the status report for the applicable period all documentation received from the Real Parties and/or submitted to CARB in support of the safety and emergency event claim. This includes "all documentation necessary to establish the conditions necessitating the safety and emergency event exception and the date(s), local time, and location. All required documentation must be in the English language." (Cal. Code Regs., tit. 17, § 93130.8, subd. (a)(2).)
 - If CARB denies a claimed safety and emergency event exception for purposes of compliance with the At-Berth Regulation for any given visit, that exception also cannot be claimed for that visit for purposes of compliance with MM AQ-9. In that event, another applicable exception must be identified, or the visit must be

identified as noncompliant.

- The status report shall include any communication on any past claimed safety and emergency event exception that Respondents received from the Real Parties and/or CARB since the last report.

2. **Vessel Commissioning:**

- **Applicability:** The AMP requirement in MM AQ-9 does not apply during any portion of a vessel visit that qualifies as “commissioning” under California Code of Regulations, Title 17, section 93130.8, subdivision (c). “Commissioning” is defined as “the process undertaken by the vessel operator and terminal operator to ensure that the shorepower equipment on the vessel is compatible with the shore power equipment on the terminal and that there are no safety issues for both the equipment and the personnel handling the connection.” (Cal. Code Regs., tit. 17, §93130.2, subd. (b)(84).) Any exceptions claimed for vessel commissioning shall follow the At-Berth Regulation’s exception for vessel commissioning. That exception is set forth in California Code of Regulations, Title 17, section 93130.8, subdivision (c), as follows:
 - “The first vessel commissioning visit made by a vessel to a terminal may be an exception as long as the vessel was able to successfully connect to shore power during that visit.”
 - In addition, there can be a vessel commissioning exception after the first visit provided that the vessel operator demonstrates that either: “(1) The commissioning process could not be accomplished in a single visit; or (2) The terminal requires that the vessel be recommissioned.”
 - For any vessel visit for which a commissioning exception is claimed, the vessel operator and terminal must commence and complete commissioning as soon as reasonably practicable upon vessel arrival.
- **Reporting:** Respondents must submit as part of the status report for the applicable period all documentation received from the Real Parties and/or submitted to CARB in support of the commissioning visit claim, as specified in California Code of Regulations, Title 17, sections 93130.7, subdivision (e)(4) and 93130.8, subdivision (c) of the At-Berth Regulation. The status report must include documentation showing whether vessel commissioning was commenced and completed as soon as reasonably practicable.
 - If CARB denies a claimed commissioning exception for purposes of compliance with the At-Berth Regulation for any given visit,

that exception cannot be claimed for that visit for purposes of compliance with MM AQ-9. In that event, another applicable exception must be identified, or the visit must be identified as noncompliant.

- The report will include any communication on any past claimed commissioning exception that Respondent received from the Real Parties and/or CARB since the last report.

3. **Equipment Failure:**

- Applicability: The AMP requirement in MM AQ-9 does not apply during any portion of a vessel visit that occurs during either a vessel-side equipment failure or a terminal-side equipment failure.
 - A “terminal-side equipment failure” shall be deemed to occur when the terminal or Respondents have installed shoreside control equipment and maintains that equipment according to manufacturer recommendations, but that equipment experiences an unexpected failure at the time of hoteling during the vessel visit for which the equipment failure is claimed. In addition, a “terminal-side equipment failure” cannot be claimed unless arrangements are promptly made to ensure that repair, replacement, or servicing of the failed equipment will be completed as soon as possible.
 - A “vessel-side equipment failure” shall be deemed to occur when a vessel owner or operator has installed on-board equipment to connect with shoreside control equipment and maintains that on-board equipment according to manufacturer recommendations, but that on-board equipment experiences an unexpected failure at the time of hoteling during the vessel visit for which the equipment failure is claimed. In addition, a “vessel-side equipment failure” cannot be claimed unless arrangements are promptly made to ensure that repair, replacement, or servicing of the failed on-board equipment will be completed as soon as possible.
- Reporting: Respondents must submit as part of the status report for the applicable period any documentation received from the Real Parties and/or CARB related to the equipment failure. In addition, Respondents shall submit any further documentation necessary to substantiate a claimed equipment failure exception as defined above. Necessary documentation includes, at minimum, the dates and times of the failure(s); any relevant correspondence documenting the equipment failure consistent with the definitions above; evidence that the equipment at issue has been maintained according to manufacturer recommendations; evidence that the equipment failure was unexpected at the time of hoteling during the vessel visit for which the equipment failure is claimed; and evidence that

arrangements have been made to ensure that repair, replacement, or servicing will be completed as soon as possible.

1 **PROOF OF SERVICE**

2 *Natural Resources Defense Council, Inc., et al. v. City of Los Angeles, et al.*
3 *San Diego County Superior Court Case No. 37-2021-00023385-CU-TT-CTL*

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18
5 and not a party to the within action. My business address is 21865 Copley Drive, Diamond Bar, CA
6 91765.

7 On **May 9, 2025**, I served the within document(s) described as **[PROPOSED] ORDER**
8 **ENFORCING WRIT (WITH EXHIBITS); AND [PROPOSED] ORDER ENFORCING**
9 **WRIT (WITH EXHIBITS) (REDLINE VERSION)** on the interested parties in this action as
10 stated below: [on the *attached service list*].

11 ☐ (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope
12 addressed as set forth above. I placed each such envelope for collection and mailing following
13 ordinary business practices. I am readily familiar with this District's practice for collection and
14 processing of correspondence for mailing. Under that practice, the correspondence would be
15 deposited with the United States Postal Service, with postage thereon fully prepaid at Diamond Bar,
16 California, in the ordinary course of business. I am aware that on motion of the party served, service
17 is presumed invalid if postal cancellation date or postage meter date is more than one day after date
18 of deposit for mailing in affidavit.

19 ☐ (BY OVERNIGHT DELIVERY) I deposited in a box or other facility regularly maintained
20 by Overnight Express, an express service carrier, or delivered to a courier or driver authorized by
21 said express service carrier to receive documents, a true copy of the foregoing document(s) in a
22 sealed envelope or package designated by the express service carrier, addressed as set forth above,
23 with fees for overnight delivery paid or provided for.

24 ☐ (BY FAX) By transmitting a true copy of the foregoing document(s) via facsimile
25 transmission from this District's sending facsimile machine, whose telephone number is (909) 396-
26 2961, to each interested party at the facsimile machine telephone number(s) set forth on the attached
27 mailing list. Said transmission(s) were completed on the aforesaid date at the time stated on the
28 transmission record issued by the District's sending facsimile machine. Each such transmission was
reported as complete and without error and a transmission report was properly issued by the
District's sending facsimile machine for each interested party served. A true copy of each
transmission report is attached to the office copy of this proof of service and will be provided upon
request.

☐ (BY PERSONAL SERVICE) I caused to be delivered a true copy of the foregoing
document(s) in a sealed envelope by hand to the offices of the above addressee(s).

☒ (BY E-MAIL) By transmitting a true .pdf copy of the foregoing document(s) by e-mail
transmission from rmendoza@aqmd.gov to each interested party at the e-mail address(es) set forth
above [on the attached service list]. Said transmission(s) were completed on the aforesaid date at
the time stated on declarant's e-mail transmission record.

Executed on May 9, 2025, at Chino Hills, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing
is true and correct.

Rachel Mendoza
(Type or print name)


(Signature)

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