

June 16, 2020

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Submitted via email: [jcashman@stocktonport.com](mailto:jcashman@stocktonport.com)

Dear Jason Cashman:

Thank you for providing the California Air Resources Board (CARB) with the opportunity to comment on the Central Valley Ag Group Bulk Whole Cottonseed Transload Facility (Project) Initial Study and Mitigated Negative Declaration (IS/MND), State Clearinghouse No. 2020050308. The Project proposes the construction of a new transload facility that would be used to transfer approximately 96,000 tons per year of cottonseed from inbound rail cars to outbound heavy-duty trucks. Once in operation, the Project would add 8 rail trips per month along the existing BNSF rail line and 320 heavy-duty truck trips per month along local roadways. The Project is located within the Port of Stockton (Port), California, which is the lead agency for California Environmental Quality Act (CEQA) purposes.

Industrial uses, such as transloading facilities, can result in high daily volumes of heavy-duty diesel truck and rail traffic and operation of on-site equipment (e.g., forklifts, yard tractors, etc.), which emit toxic diesel emissions and contribute to regional air pollution and global climate change.<sup>1</sup> CARB has reviewed the IS/MND and is concerned with the potential cumulative health impacts associated with the Project in conjunction with other industrial projects planned or already in operation at the Port.

## **I. The Project Would Increase Exposure to Air Pollution in Disadvantaged Communities**

The Project, if approved, will expose nearby disadvantaged communities to elevated air pollution. Addressing the disproportionate impacts that air pollution has on disadvantaged communities is a pressing concern across the state, as evidenced by statutory requirements compelling California's public agencies to target these communities for clean air investment, pollution mitigation, and environmental regulation.

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<sup>1</sup> With regard to greenhouse gas emissions from this project, CARB has been clear that local governments and project proponents have a responsibility to properly mitigate these impacts. CARB's guidance, set out in detail in the Scoping Plan issued in 2017, makes clear that in CARB's expert view local mitigation is critical to achieving climate goals and reducing greenhouse gases below levels of significance.

The following 3 pieces of legislation need to be considered and included in the IS/MND when developing a project like this near a Stockton community.

*Senate Bill 535 (De León, 2012)*

Senate Bill 535 (De León, Chapter 830, 2012)<sup>2</sup> recognizes the potential vulnerability of low-income and disadvantaged communities to poor air quality and requires funds to be spent to benefit disadvantaged communities. The California Environmental Protection Agency (CalEPA) is charged with the duty to identify disadvantaged communities. CalEPA bases its identification of these communities on geographic, socioeconomic, public health, and environmental hazard criteria (Health and Safety Code, section 39711, subsection (a)). In this capacity, CalEPA currently defines a disadvantaged community, from an environmental hazard and socioeconomic standpoint, as a community that scores within the top 25 percent of the census tracts, as analyzed by the California Communities Environmental Health Screening Tool Version 3.0 (CalEnviroScreen).<sup>3</sup> According to CalEnviroScreen, Stockton communities near the Project score within the top 1 percent of California census tracts; therefore, CARB urges the Port to ensure that the Project does not adversely impact neighboring disadvantaged communities.

*Senate Bill 1000 (Leyva, 2016)*

Senate Bill 1000 (SB 1000) (Leyva, Chapter 587, Statutes of 2016)<sup>4</sup> amended planning and zoning laws. SB 1000 requires local governments that have identified disadvantaged communities to incorporate the addition of an environmental justice element into their general plans, upon the adoption or next revision of 2 or more elements concurrently on or after January 1, 2018. SB 1000 requires environmental justice elements to identify objectives and policies to reduce unique or compounded health risks in disadvantaged communities. Generally, environmental justice elements will include policies to reduce the community's exposure to pollution through air quality improvement. SB 1000 affirms the need to integrate environmental justice principles into the planning process to prioritize improvements and programs that address the needs of disadvantaged communities, such as the Stockton communities that surround the Project site. Since the City of Stockton (City) has not yet adopted an environmental justice element, it is imperative that the Port consult with the City to determine how it can best integrate air quality elements into its Project that reduce local disadvantaged communities' exposure to the Project's pollutants. This will ensure that the Port is acting in a manner consistent with the City's efforts in developing policies for its environmental justice element.

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<sup>2</sup> Senate Bill 535, De León, K., Chapter 800, Statutes of 2012, modified the California Health and Safety Code, adding § 39711, § 39713, § 39715, § 39721 and § 39723.

<sup>3</sup> "CalEnviroScreen 3.0." Oehha.ca.gov, California Office of Environmental Health Hazard Assessment, June 2018, <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>.

<sup>4</sup> Senate Bill 1000, Leyva, S., Chapter 587, Statutes of 2016, amended the California Health and Safety Code, § 65302.

Assembly Bill 617 (Garcia, 2017)

The State of California has emphasized protecting local communities from the harmful effects of air pollution through the passage of Assembly Bill 617 (AB 617) (Garcia, Chapter 136, Statutes of 2017).<sup>5</sup> AB 617 requires new community-focused and community-driven actions to reduce air pollution and improve public health in communities that experience disproportionate burdens from exposure to air pollutants. In response to AB 617, CARB established the Community Air Protection Program with the goal of reducing exposure in communities heavily impacted by air pollution. This Project falls within the boundaries of the Stockton community, which is 1 of 3 statewide communities chosen for inclusion in the second year of the Community Air Protection Program.

Stockton was selected for both community air monitoring and the development of an emissions reduction program due to its high cumulative exposure burden, the presence of a significant number of sensitive populations (children, elderly, and individuals with pre-existing health conditions), and the socioeconomic challenges experienced by its residents. The average overall CalEnviroScreen score for the Stockton community is in the top 1 percent, indicating that the area is home to some of the most vulnerable neighborhoods in the state. The air pollution levels in Stockton routinely exceed state and federal air quality standards. Additionally, the community was prioritized by the San Joaquin Valley's AB 617 Environmental Justice Steering Committee.<sup>6</sup>

Health-harming emissions, including particulate matter (PM), toxic air contaminants, and diesel emissions generated during the construction and operation of the Project may negatively impact the community, which is already disproportionately impacted by air pollution from existing freight facilities and other stationary sources of air pollution. Part of the AB 617 process requires CARB and the San Joaquin Valley Air Pollution Control District (SJVAPCD) to create a highly-resolved inventory of air pollution sources within this community. CARB will be more than happy to share this community emissions inventory with the Port to aid in the CEQA process.

## **II. The IS/MND Does Not Adequately Analyze the Project's Potential Health Risk Impacts**

The IS/MND did not conduct a health risk assessment (HRA) or any other quantitative or qualitative analysis, to evaluate the Project's potential impact on public health. Instead, the IS/MND concluded that the Project would not expose nearby sensitive populations to substantial pollutant concentrations that would result in a significant impact since the Project is located beyond 1,000 feet from the nearest residence and

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<sup>5</sup> Assembly Bill 617, Garcia, C., Chapter 136, Statutes of 2017, modified the California Health and Safety Code, amending § 40920.6, § 42400, and § 42402, and adding § 39607.1, § 40920.8, § 42411, § 42705.5, and § 44391.2.

<sup>6</sup> California Air Resources Board (2018). 2018 Community Recommendations Staff Report. Sacramento, California: Community Air Protection Program. <https://ww2.arb.ca.gov/resources/documents/2018-community-recommendations-staff-report>.

has a low diesel particulate matter (diesel PM) emission rate. Although the Project's air pollutant emission rates are below SJVAPCD's significance thresholds, the IS/MND must, at a minimum, include a quantitative analysis that demonstrates the extent of the Project's impact on public health.<sup>7</sup>

Since the Project is located near residences already disproportionately burdened by multiple sources of air pollution, CARB recommends that the Port should prepare an HRA for the Project. The HRA prepared in support of the Project should be based on the latest Office of Environmental Health Hazard Assessment (OEHHA) guidance (2015 Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments).<sup>8</sup>

### **III. The IS/MND Should Consider the Project's Cumulatively Considerable Air Quality and Associated Public Health Effects**

The IS/MND concluded that the Project's air pollutant emissions and cancer risks would not contribute to a significant cumulative impact. This conclusion was reached by comparing the Project's criteria pollutant emissions to SJVAPCD's significant thresholds. Although the Port did evaluate the Project's air quality impacts, it did not consider the Project's cumulative effects in conjunction with other industrial projects planned or already in operation at the Port.

CEQA requires lead agencies to consider whether the incremental effects of a proposed project are cumulatively considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects. (See Title 14, Cal. Code of Regs., § 15064, subd. (h)(1).) There are numerous existing and planned projects within the Port that will be in operation at the same time as the Project. These cumulative projects include the Eco-Energy Liquid Bulk Receiving Terminal Development Project, NuStar Ethanol Infrastructure Upgrades Project, and NuStar Domestic Renewable Diesel Project. Considering the number of projects being constructed or already in operation at the Port, CARB is concerned that the Project could have a cumulatively considerable impact on air quality and public health. To lessen the Project's contribution to the Port's cumulative diesel PM and nitrogen oxide (NO<sub>x</sub>) emissions, CARB urges the Port and applicant to implement the following air pollutant emission reduction measures.

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<sup>7</sup> In fact, the California Supreme Court recently addressed this issue in its landmark ruling in *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502 (*Friant Ranch*). In *Friant Ranch*, the Court held that an EIR is inadequate if it does not make "a reasonable effort to discuss relevant specifics regarding the connection between two segments of information already contained in the EIR, the general health effects associated with a particular pollutant and the estimated amount of that pollutant the project will likely produce." (*Id.*, at p. 521.)

<sup>8</sup> Office of Environmental Health Hazard Assessment (OEHHA). Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments. February, 2015. Accessed at: <https://oehha.ca.gov/media/downloads/cmr/2015guidancemanual.pdf>.

1. Ensure the cleanest possible construction practices and equipment are used. This includes eliminating the idling of diesel-powered equipment and providing the necessary infrastructure (e.g., electrical hookups) to support zero and near zero-emissions equipment and tools.
2. In construction contracts, include language that requires all off-road diesel-powered equipment used during construction to be equipped with Tier 4 or cleaner engines, except for specialized construction equipment in which Tier 4 engines are not available. In place of Tier 4 engines, off-road equipment can incorporate retrofits such that the emission reductions achieved equal or exceed that of a Tier 4 engine.
3. In construction contracts, include language that requires all off-road equipment with a power rating below 19 kilowatts (e.g., plate compactors, pressure washers) used during project construction be battery powered.
4. In construction contracts, include language that requires all heavy-duty trucks entering the construction site, during the grading and building construction phases be model year 2014 or later. All heavy-duty haul trucks should also meet CARB's lowest optional low-NO<sub>x</sub> standard starting in 2022.<sup>9</sup>
5. Include contractual language in tenant lease agreements that requires all service equipment (e.g., yard hostlers, yard equipment, forklifts, and pallet jacks) used within the project site to be zero-emission. This equipment is widely available.
6. Include contractual language in tenant lease agreements that requires all heavy-duty trucks entering or on the project site to be model year 2014 or later, expedite a transition to zero-emission vehicles, and be fully zero-emission beginning in 2030.

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<sup>9</sup> In 2013, CARB adopted optional low-NO<sub>x</sub> emission standards for on-road heavy-duty engines. CARB encourages engine manufacturers to introduce new technologies to reduce NO<sub>x</sub> emissions below the current mandatory on-road heavy-duty diesel engine emission standards for model year 2010 and later. CARB's optional low-NO<sub>x</sub> emission standard is available at: <https://www.arb.ca.gov/msprog/onroad/optionnox/optionnox.htm>.

7. Include contractual language in tenant lease agreements that requires the tenant be in, and monitor compliance with, all current air quality regulations for on-road trucks, including CARB's Heavy-Duty (Tractor-Trailer) Greenhouse Gas Regulation,<sup>10</sup> Periodic Smoke Inspection Program (PSIP),<sup>11</sup> and the Statewide Truck and Bus Regulation.<sup>12</sup>
8. Include contractual language in tenant lease agreements restricting trucks and support equipment from idling longer than 5 minutes while on site.

#### IV. Conclusion

There are many existing and planned industrial projects at the Port that will be in operation at the same time as the Project. CARB is concerned that the Project, in conjunction with other projects at the Port, could expose nearby Stockton communities to diesel PM and NO<sub>x</sub> emissions that could have a significant effect on public health. To reduce the Project's contribution to diesel PM and NO<sub>x</sub> emissions emitted within the Port, the final design of the Project should include all existing and emerging zero-emission technologies. CARB encourages the Port and applicant to implement the measures listed under Section III of this comment letter and to carefully consider the Project's cumulative impact on air quality and public health.

Given the breadth and scope of projects subject to CEQA review throughout California that have air quality and greenhouse gas impacts coupled with CARB's limited staff resources to substantively respond to all issues associated with a project, CARB must prioritize its substantive comments here based on staff time, resources, and its assessment of impacts. CARB's deliberate decision to substantively comment on some issues does not constitute an admission or concession that it substantively agrees with the lead agency's findings and conclusions on any issues on which CARB does not substantively submit comments.

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<sup>10</sup> In December 2008, CARB adopted a regulation to reduce greenhouse gas emissions by improving the fuel efficiency of heavy-duty tractors that pull 53-foot or longer box-type trailers. The regulation applies primarily to owners of 53-foot or longer box-type trailers, including both dry-van and refrigerated-van trailers, and owners of the heavy-duty tractors that pull them on California highways. CARB's Heavy-Duty (Tractor-Trailer) Greenhouse Gas Regulation is available at: <https://www.arb.ca.gov/cc/hdghg/hdghg.htm>.

<sup>11</sup> The PSIP program requires that diesel and bus fleet owners conduct annual smoke opacity inspections of their vehicles and repair those with excessive smoke emissions to ensure compliance. CARB's PSIP program is available at: <https://www.arb.ca.gov/enf/hdvp/hdvp.htm>.

<sup>12</sup> The regulation requires that newer heavier trucks and buses must meet particulate matter filter requirements beginning January 1, 2012. Lighter and older heavier trucks must be replaced starting January 1, 2015. By January 1, 2023, nearly all trucks and buses will need to have 2010 model year engines or equivalent. CARB's Statewide Truck and Bus Regulation is available at: <https://www.arb.ca.gov/msprog/onrdiesel/onrdiesel.htm>.

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CARB appreciates the opportunity to comment on the IS/MND for the Project and can provide assistance on zero-emission technologies and emission reduction strategies, as needed. If you have questions, please contact Stanley Armstrong, Air Pollution Specialist, at (916) 440-8242 or via email at [stanley.armstrong@arb.ca.gov](mailto:stanley.armstrong@arb.ca.gov).

Sincerely,



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