

The California Supply Chain Jobs Alliance (CSCJA)

April 9, 2010

Jared Blumenfeld, Administrator
U.S. EPA Region 9
75 Hawthorne Street
San Francisco, CA, 94105

RE: Intent to issue a Scoping Proposal for a Health Impact Assessment on the San Pedro Bay Ports

Dear Mr. Blumenfeld:

On February 10, 2010, the U.S. Environmental Protection Agency (EPA) convened the "Port of Los Angeles (POLA) and Port of Long Beach (POLB) Health Impact Assessment (HIA) Scoping Meeting." Subsequently, on March 1, 2010, a follow-up meeting was held with EPA staff in Los Angeles to discuss EPA's intended next steps to be taken as part of that process. The Scoping Meeting and the follow-up meeting failed to provide information concerning EPA's future plans for the HIA scoping process. In fact, the meeting explicitly excluded discussion of the following threshold questions:

- Should an HIA be conducted?
- On what should an HIA be conducted?
- How would significance of impacts be determined?
- Who would pay for an HIA?
- How would the results of an HIA be used?

We believe a proposal of scope should not be released in advance of discussing these items. This letter is intended to reiterate our questions and concerns regarding what are being characterized by proponents as the Health Impact Assessment (HIA).

The California Supply Chain Jobs Alliance (CSCJA), a coalition of Southern California supply chain businesses, appreciates the opportunity to comment on EPA's intent to issue a "scoping

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- California Rail Industry Association • International Warehouse and Logistics Association •
 - FuturePorts •
 - Pacific Merchant Shipping Association • Western States Petroleum Association •

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proposal” that will “clarify the elements of an HIA” for the Ports of Long Beach and Los Angeles (the “Ports”). While we support efforts to educate the public, we are concerned that EPA is moving with excessive haste and without benefit of all the facts. EPA appears to be moving forward under the assumption that the existing process is deficient. However, no one was able to articulate these deficiencies at either the Scoping Meeting or at the follow-up meeting. It is our opinion that no deficiencies exist, that either a Port-wide, or project specific HIA is inappropriate and unnecessary, and that issuing a scoping proposal at this time could create more confusion than answers. We therefore recommend EPA avoid creating expectations it, the Ports, or the industries operating at the Ports, cannot meet.

EPA actions which increase burdens on the Ports, such as an HIA, may have an impact on the tenant industries and related supply chain. For this reason, we have great interest in EPA’s efforts to explore HIAs.

Ports and businesses have been making significant investments to reduce emissions.

~~CSCJA requests EPA not issue a scoping proposal until it meets with the Ports and supply chain industry representatives for further discussion.~~ CSCJA would like the opportunity to inform EPA about the activities of essential goods movement sectors at both Ports and in Southern California, in particular efforts to reduce emissions. A few of these industry actions are listed below. These investments in technology and operational changes have resulted in real reductions that are recognized by the California Air Resources Board (ARB), EPA, and illustrated in the Ports’ own inventories. The 2008 POLA emissions inventory showed a 31% decrease in Diesel Particulate Matter (DPM) for all port sources since 2005, and total emissions from all sources on a per-container basis have been reduced by as much as 35% since 2005. The 2008 POLB emissions inventory showed since 2005 a 21% drop in DPM, a 12% decline in NOx and an 18% drop in SOx. Before EPA creates additional information gathering and reporting burdens for the Ports, they should ensure they have all of the latest facts from all of the affected industries.

Sample Business Commitments and actions to reduce impacts at the San Pedro Bay Ports
(More complete information is enclosed in Attachment B):

- Railroads: ARB has estimated that diesel PM levels at major rail yards throughout California are expected to be reduced by 66% between 2005 and 2020, even accounting for possible growth. These reductions have resulted from a combination of enforceable agreements with the railroads and regulations on vehicles and equipment serving rail yards, as summarized in the ARB fact sheet in Attachment B.
- Ocean Going Vessels: Several commitments have been estimated by the Ports to yield emission reductions, including: the vessel speed reduction (VSR) program requiring 12 knots during transiting outside the harbor; the use of alternative maritime power (AMP) at China Shipping’s Berth 100 and by one NYK vessel calling at Yusen Terminals; switching to a lower sulfur fuel near the coast and at berth for ARB regulation and/or Port Incentive Fuel Switching Program, and; newer vessels calling at the Port with cleaner and

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more fuel-efficient engines that meet or exceed standards set by the International Maritime Organization.

- Trucks: ARB's Drayage Truck Regulation and the Ports Clean Truck Program have expedited the turnover of the fleets serving both Ports. Specifically, by 1 October 2008 – all pre-1989 trucks are banned from port services; by January 2010 – All 1989-1993 trucks along with un-retrofitted 1994-2003 trucks are banned from port services. By January, 2012 – All trucks that do not meet 2007 and later on-road heavy duty engine standards are banned from port services.
- Cargo Handling Equipment: ARB's 2005 regulation requires controls on equipment such as yard trucks and forklifts that operate at ports. ARB estimates that this regulation will reduce DPM and NOx emissions by up to 80% by 2020.

Regulatory uncertainty is hurting the business climate. As EPA is aware, it is becoming increasingly difficult to operate in and around the San Pedro Bay Ports. The goods movement industries that serve the Ports have invested billions of dollars over the years in local infrastructure, provided hundreds of thousands of jobs, and have generated income to local and state economies and the federal government. International trade can and should continue to be a crucial economic engine for the U.S., as recognized by the Obama Administration in its recently announced directive to increase U.S. exports. Confusing, questionable, and unnecessary duplicative processes like the proposed HIA jeopardize those directives, particularly since California already imposes vast regulatory burdens on these industries. Since 2006, ARB has imposed \$5 billion in costs related to regulations on port operations.¹ Current operations are continuously scrutinized by regulators and new projects face a contentious, lengthy, expensive, and often litigious, permitting process; various additional fees have been proposed, which, in many cases, would need to be absorbed by the operator; competition is increasing from other domestic and foreign ports of entry (including ports in Mexico and on the East Coast of the U.S. once the Panama Canal expansion is completed in 2014); and container traffic is at a seven-year low given the present recession. In this current difficult business climate, the existing level of environmental review for projects at the Ports already provides sufficient information to analyze conservatively identified impacts, and already includes the imposition of feasible mitigation measures as informed by the results of a given Environmental Impact Report's (EIR) Health Risk Assessment (HRA).

Health impacts are thoroughly analyzed on a conservative basis under existing CEQA and NEPA processes. EPA should not recommend that an HIA be a required element of an EIS/EIR under CEQA or NEPA. NEPA/CEQA analyses, using conservative assumptions and models, already address potential project specific environmental health impacts in the adjacent communities. The HRA included in an EIS/EIR provides extremely conservative descriptions of the potential public health impacts of the proposed project and identifies the baseline and

¹Materials submitted to *State Senate Hearing on Myriad Economic Challenges Facing West Coast Ports Reveals Opportunities to Recapture Cargo and Induce Growth*
http://www.cunninghamreport.com/uploads/backup_docs/707-CARBregulatorycost.pdf

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potential future impacts from a project, covering various aspects in addition to air quality, including for example traffic, noise and lighting. The project EIR includes mitigation measures designed to address these impacts. Where indicated, the project HRA further incorporates the maximum health impacts to sensitive receptors including schools, daycare centers, convalescent homes, and hospitals for each project alternative.

The NEPA/CEQA processes provide a mechanism by which local communities are actively involved in the evaluation of community health impacts and associated mitigation measures. This is evidenced by the Ports' receiving an average of 50-100 comments from members of the public during public comment periods and testimony at public hearings for each of the last five San Pedro Bay Port project EIRs. The Ports provide a robust opportunity for public education, review and input in these processes. There is no need to additionally conduct a separate HIA to achieve this goal.

Other regulatory and voluntary planning processes address issues that would be covered by a port-wide HIA. Plans such as the Ports' Clean Air Action Plan (CAAP), the State Implementation Plan (SIP), the Goods Movement Emission Reduction Plan (GMERP), and the Regional Transportation Plan (RTP) comprehensively address air quality and transportation issues. The GMERP also specifically looks at the health impacts of goods movement, and conservatively estimates expected health risk reductions based on actions taken in their plan. Should EPA choose to proceed with a port-wide HIA, the CSCJA believes that many questions must be answered before a scoping proposal is released, particularly with respect to how an HIA would interface with existing programs. We have provided in Attachment A a list of questions/issues for EPA to consider and answer before issuing any scoping proposal. The primary concerns underlying those questions are summarized below.

What does EPA see as the purpose of the port-wide HIA? EPA needs to provide clear, logical reasoning for what additional information is provided through an HIA, and what it foresees as the outcomes of the HIA. In particular, we want to understand how information drawn from an HIA would:

- inform and influence other port, EPA, ARB, AQMD or other local and regional planning programs;
- be integrated into existing environmental and regulatory planning processes; and
- fill any existing gaps in the current NEPA/CEQA process or the analysis provided by CAAP, SIP, GMERP, or the RTP.

How would the results of an HIA be used? EPA has sponsored initial public meetings, bringing in a potential contractor to brief the stakeholders on a prospective HIA, and by drafting a scoping proposal. However, many of the issues that would be examined through a process that studies the impacts of "housing, transportation, employment and income, noise, air quality,

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access to goods and services, access to parks, and social networks,”² have implications for local decision making. EPA should recognize that the Ports cover a large area and neighbor multiple, unique communities — each with differing needs and social issues. Even if it is not EPA’s intention to step into local jurisdiction, the local implications of the HIA that EPA is driving would ultimately affect and draw judgment upon local decisions. Beyond its desire to “remain a partner in this effort,” it is unclear what role EPA foresees a project-specific HIA playing in new development project review processes. When will the HIA be conducted — prior to, during or after the current CEQA/NEPA process? If a Port-wide HIA is conducted, EPA stated in the invitation letter to the February 10th Scoping Meeting that it expects the Ports and local community members “to lead the subsequent steps in the development of the HIA” and to “identify funding sources to conduct the HIA.” Will the leader of the HIA (such as the Ports) be bound to EPA’s vision as contained in the scoping proposal; or can the leader independently determine the scope of the study?

How does EPA define the parameters of an HIA? Based on information presented at the February Scoping Meeting, we are concerned an HIA may invite a realm of speculation where dubious connections can be drawn between purported health impacts and port operations. The described approach lacks both scientific rigor and adopted, peer reviewed scientific standards. The HIA as described would blur the clear boundaries of an HRA, which are established to ensure nexus to the Project or emissions source(s). The February meeting materials state that “environmental, social, demographic, and economic conditions drive the health and well-being of communities.” Establishing when, where, and how these conditions were created and how Port operations could potentially influence conditions that may or may not otherwise exist for a Port-wide HIA is difficult and would likely only be founded in theories and hypothetical scenarios.” Considerations include 1) determining which metrics will be included, 2) which locations will be examined (e.g. potentially impacted communities?) and 3) if only potentially impacted communities, by what criteria will those communities be identified?

Perhaps the most important consideration would be to further clarify how an HIA would establish causation between the Ports and the various factors under evaluation. When connecting health impacts of a given community to social and economic conditions, it will be challenging to establish a basis for connecting different outcomes to their ultimate cause or causes. When there are multiple factors impacting a given outcome from sources that are potentially vastly different, are the other sources responsible for taking efforts to mitigate a negative outcome? If so, how will mitigation responsibilities be apportioned between agencies and sources?

In cases where EPA is suggesting the HIA be included as part of project review processes, we find it inappropriate and believe it merely serves as a tool to delay projects. Without setting clear rules as to what can and cannot be considered as part of an HIA, the process could be modified and updated endlessly, likely stalling projects and causing ballooning costs without delivering a tangible outcome. Who decides what is in and what is out? Since an HIA could include any

² Materials from EPA’s 2/10/2010 Port of Los Angeles and Port of Long Beach Health Impact Assessment Scoping Meeting, *Frequently Asked Questions about Integrating Health Impact Assessment into Environmental Impact Assessment*, Human Impact Partners.

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number of variables that affect a given community, how is it decided what and how many factors are included?

Request for a follow-up meeting with EPA. Given the potential ramifications of pursuing an HIA on a high-profile economic engine for the U.S. and California, we request that EPA delay issuing a scoping proposal until after it meets with the Ports and industry representatives for further discussion. EPA should make sure it has all of the facts from all of the industries that serve the Ports, and operate in Southern California, before it adds another regulatory hurdle which is duplicative and neither clearly defined by regulation, legislation, or published guidance, nor supported by budget resources or adequate staffing. Our members are available to meet with you (either in Southern California or in San Francisco), and request EPA delay release of the scoping proposal.

Thank you for the opportunity to express our views. If you have any questions or concerns, please call me at (310) 922-6227.

Sincerely,



Elizabeth Warren
CSCJA member, and Executive Director of FuturePorts

cc: Steven John, U.S. EPA
Enrique Manzanilla, U.S. EPA
Paul Amato, U.S. EPA
Tom Kelly, U.S. EPA
Cynthia Gomez, Cal/EPA
Mary Nichols, ARB
Cynthia Marvin, ARB
Sylvia Oey, ARB
Linda Smith, ARB
Nick Sramek, Commissioner, Port of Long Beach
Richard Steinke, Port of Long Beach
Robert Kanter, Port of Long Beach
Cindy Miscikowski, Commissioner, Port of Los Angeles
Geraldine Knatz, Port of Los Angeles
Ralph Appy, Port of Los Angeles

Attachment A: Questions for EPA regarding the HIA Scoping Proposal

1) What does EPA see as the purpose of a port-wide HIA?

- a) Why is it advisable or necessary to issue an HIA scoping proposal now? What new information will be learned from an HIA that is not (or will not be) already assessed?
 - i) If new information can be learned, why is it important to learn this information? Relevance? To what EPA program or programs?
- b) Before issuing a scoping proposal, EPA should issue a table that shows:
 - i) The information already analyzed and disclosed by the Ports in their current environmental assessments,
 - ii) The additional information EPA believes is necessary to acquire,
 - iii) The federal, legislative, or regulatory relevance of this information, and
 - iv) The published federal guidance that exists so the all parties can understand how the new information should be obtained.
- c) Is there a particular issue not currently being addressed that warrants an HIA?
 - i) All projects at the Ports have undergone extensive CEQA/NEPA review.
 - ii) All future Port projects will undergo extensive CEQA/NEPA review.
 - iii) The Ports have adopted extensive processes to communicate with the residents and communities impacted by Port operations. The San Pedro Bay Ports have already decided to set aside state resources to be used by local communities to help offset the impacts of the Ports. What is the federal role in the disbursement of these funds?
- d) Has EPA analyzed the business environment and determined that it is a good time to add additional environmental analysis and review? Please provide EPA's economic analysis.
- e) Given that emissions at the Ports (and throughout California) have decreased significantly in the past few years, is there an environmental necessity to introduce a new environmental analysis and review process on top of the already extensive process that exists now?
- f) EPA should clarify how the information acquired from an HIA will be used in the future.
 - i) Will future CEQA/NEPA analyses need to incorporate the information from the HIA?
 - ii) Will the HIA place a burden/requirement on future projects? How?

- iii) Will the Ports (or future proponents of projects at the Ports) be required to mitigate impacts that may be determined in the HIA? How?

2) What is EPA's role in an HIA at the Ports?

- a) EPA indicates it will issue a "scoping proposal" for a port-wide HIA in April. EPA also indicates it expects the Ports and local community members to "identify funding sources to conduct the HIA." Furthermore, EPA indicates it "will remain a partner in this effort," but it will "look to the Ports and community to lead the subsequent steps in the development of the HIA." Questions that arise include:
 - i) Who is responsible for developing the HIA? The Ports, the community, EPA? Others? It is unclear.
 - (1) If EPA is not going to pay for the study, does it expect to lead the study? If EPA will not lead the study, who will?
 - ii) Does EPA envision the report will be prepared by a committee?
 - (1) Will EPA be a member of an envisioned steering committee — and merely submit comments and suggestions?
 - (2) Will the leader of the study be obligated to follow EPA's comments or direction?
- b) Are the Ports and community obligated to perform an HIA?
 - i) Can the Ports (or any interested party) decline to participate?
 - ii) Are the Port tenants, or industries that operate at the ports, obligated to participate in the HIA?
 - (1) Are they obligated to submit data?
 - (2) Will they have a financial obligation?
- c) Will the leader of the HIA (such as the Ports) be bound to EPA's vision as contained in the scoping proposal; or can the leader independently determine the scope of the study?
- d) Will EPA influence who will be included as a participant in the study – or will it be up to the funder of the study to make these decisions?
 - i) Will EPA influence the selection of contractors and technical consultants to perform the study?

3) What does EPA consider the scope of an HIA?

- a) If it is a port-wide HIA, how will existing conditions be established?
 - i) Operations at an international port are constantly changing and are driven by factors as variable as weather, energy prices, seasonal trade flows, and economic fluctuations. What will be the baseline year?
 - ii) How will non-port related local decisions impact the communities that are part of the HIA be treated?
- b) What assumptions, quantitative data, and qualitative accounts, go into evaluating what is and is not connected to port operations?
 - i) What is the basis for these assumptions?
- c) What is not eligible to be evaluated as part of the HIA?
- d) How is causation or correlation established? For example, as outlined in the FAQs distributed at the public meeting, "if there is strong evidence of the existence of a hazard but data does not exist to quantify a prediction...the HIA will [consider it]."³ Will it do so even if causation cannot be established?
- a) What sources at the Ports will be assessed?
- b) Who determines what impacts will be assessed?
- c) What impacts will be assessed?
 - i) How will the relationships between different impact factors be established?
- d) Will future year emissions be calculated?
 - i) How will the growth rate be estimated?
 - ii) How does one incorporate expected emission reduction due to forthcoming regulations and voluntary actions?
 - iii) How does one account for expected future Port projects in the HIA?
 - (1) How should one estimate when these projects will be completed?
 - (2) How should one estimate future levels of operations in new projects?

³ Materials from EPA's 2/10/10 Port of Los Angeles and Port of Long Beach Health Impact Assessment Scoping Meeting, *Frequently Asked Questions about Integrating Health Impact Assessment into Environmental Impact Assessment*, Human Impact Partners.

- e) What is the threshold of significance for all elements in the HIA?
- f) If mitigation will be considered;
 - i) How do you know the level above which to require mitigation?
 - ii) How do you know how much mitigation is enough?

2) Who is in charge of developing a final report for an HIA?

- a) How is the entity picked? What should their qualifications be?
- b) Who decides the format and content of the final report?
- c) Who owns the information and data?
- d) Should complete stakeholder consensus be required?
- e) Will there be a place for dissenting views? Or when there is not consensus, what process would happen?