July 18, 2016

Clerk of the Board
California Air Resources Board
1001 I Street
Sacramento, California 95814

Electronic Submittal Via:
www.arb.ca.gov/lispub/comm/bcsubform.php?listname=statesip2016&comm_period=N

RE: Proposed 2016 State Strategy for the State Implementation Plan

To Whom It May Concern:

The ports of Long Beach and Los Angeles (ports) appreciate the opportunity to comment on the Proposed 2016 State Strategy for the State Implementation Plan (State SIP Strategy). The ports recognize the amount of effort that has gone into the State SIP Strategy and we hope to support your effort through actions that we continue to undertake at the ports. Over the last decade, the ports in partnership with the maritime goods movement industry have worked aggressively to reduce our fair share of air quality impacts to the South Coast region from port-related operations, as outlined in the San Pedro Bay Ports Clean Air Action Plan (CAAP). Between 2005 and 2014, goods movement-related emissions of diesel particulate matter have been reduced by 85%, while emissions of nitrogen oxides (NOx) have dropped over 50%. While actions under the CAAP and at the local, state, and federal levels have resulted in substantial decreases in NOx emissions, much work remains for the South Coast region to meet the ozone standards in 2023 and 2031.

Overall, the ports are supportive of the proposed measures identified in the State SIP Strategy that relate to port operations, which includes measures to:

Port of LONG BEACH
The Green Port
Port of Long Beach | Environmental Planning
4801 Airport Plaza Drive | Long Beach, CA 90815
562.283.7100

THE PORT OF LOS ANGELES
Port of Los Angeles | Environmental Management
425 S. Palos Verdes Street | San Pedro, CA 90731
310.732.3675

The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

- **Adopt More Stringent National Locomotive Emission Standards**
  The ports are in favor of encouraging cleaner locomotive technologies and recommend that ARB petition USEPA to establish a new federal standard for locomotives. This effort will assist the railway operators continuing to upgrade the switching and line haul locomotives that service the ports.

- **Introduce Near-Zero Emission Engine Technologies Through Establishment of Low-NOx Emission Standards for On-Road Heavy-Duty Engines**
  The ports are in favor of a new Low NOx Engine standard and recommend that ARB establish a standard for Class 8 drayage trucks to be 90 percent cleaner than the current 2010 standard. In order for such an effort to be equitable across the country, we also urge ARB to petition USEPA to establish a federal standard. This effort will assist the drayage truck operators operating in and around the ports in continuing to upgrade their existing fleet of clean trucks.

- **Advocate with International Partners for the International Maritime Organization to Establish New Tier 4 NOx and Particulate Matter Emission Standards for Ships**
  While the ports are in favor of the ARB advocating for more stringent International Maritime Organization (IMO) standards and efficiency targets for ships, effort should be placed on encouraging the cleanest ships to deploy to our ports now. Ships meeting the IMO Tier 3 standards are currently the cleanest ships available; however, these ships are just in the process of being constructed. Due to various factors, we do not foresee a sizeable number of Tier 3 ships servicing our ports in the near term. As more of these ships become available for deployment we recommend development of strategies to attract these ships to our ports, similar to the strategies contained in the Ports' existing incentive programs. Furthermore, we encourage joint advocacy at the federal and international levels to continue to address the issue of transiting emissions.

- **Incentivize Low-Emission Efficient Ship Visits and Amend the Ships At-Berth Regulation**
  The ports have worked with ARB for a number of years as the At-Berth Regulation has been implemented and revised. Additional revisions to the current regulations are still needed. We suggest amending and expanding the current regulation to include non-regulated ships. We also believe it will be necessary to ensure that funding for shore-side emission reduction infrastructure is appropriately considered to handle future amendments to the At- Berth Regulation.

- **Encourage Further Deployment of Clean Technologies in On-Road Heavy Duty Vehicles, Locomotives, Ocean-Going Vessels, and Off-Road Equipment**
  Through our joint Technology Advancement Program, the ports have been focused on advancing technology for all of the major sources that move freight through our ports. More recent efforts have been dedicated to the development of near-zero and zero emission technology where possible. Although many of the cleaner technologies are still in the prototype testing and demonstration phase, we look forward to deploying these technologies once they are shown to be operationally feasible, durable, reliable, and cost effective. In order to accelerate the timeline for commercialization and deployment of the cleaner technologies, significant funding assistance will be critical, and the ports are very supportive of additional funding opportunities for technology development, equipment, and fueling infrastructure.

Successful Interagency Collaboration

The ports have a proven track record of developing and implementing appropriate and effective emissions reduction strategies such as the Clean Trucks Program and incentive programs for reducing emissions from ships such as the Vessel Speed Reduction Program, the Port of Long Beach Green Ship Program and the Port of Los Angeles Environmental Shipping Index Program. These efforts were entered into voluntarily, working with the goods movement industry, various stakeholders, and the air quality regulatory agencies (i.e., U.S. Environmental Protection Agency, California Air Resources Board, and South Coast Air Quality Management District). Since the ports initially implemented the CAAP, many of the port-related measures have been superseded by state or international requirements, such as the rules for replacing drayage trucks, switching to cleaner fuels, and using shore power while at berth. In particular, the ports have been successful in supporting the agencies by accelerating their adopted regulations. Moving forward, the ports will continue to look for opportunities to assist the agencies in sustaining and achieving the necessary fair-share emissions reductions for the region to meet the upcoming ozone standards.

Furthermore, to sustain the emissions reductions achieved to date and achieve the emissions reductions required to meet the attainment needs of the State and the South Coast Region, the cooperation and concerted effort of our agency partners is vital. The ports are currently in the process of updating the CAAP to identify strategies to reduce criteria pollutant and greenhouse gas emissions from port-related sources. The CAAP – which has long been a collaboration among the ports, goods movement industry and our regulatory agency partners – could be used as a tool to assist in the implementation of the proposed measures identified in the State SIP Strategy. The CAAP development provides a unique forum to discuss the technical and policy

issues related to achieving emissions reductions from goods movement related sources, including how SIP credit is taken for voluntary and incentive based strategies.

Funding for Incentives and New Technologies

Collective prioritization for strategy development and funding allocation will be critical to achieve the State's aggressive targets and broad reaching goals to reduce air pollution while maintaining a robust economy. As identified in the State SIP Strategy, implementation of the current control programs, existing incentive program funding, and new regulatory actions defined in the State SIP Strategy provide the majority of the emissions reductions necessary in the South Coast to meet the 80 parts per billion (ppb) 8-hour ozone standard by 2023 and the 75 ppb standard by 2031.[1]

Securing funding to support the incentive-based advancement of technologies will be crucial and must be prioritized in order to achieve significant market penetration of the cleanest technologies. The ports know first-hand that the move toward zero emissions is a costly endeavor and have placed significant emphasis to advance the development of near-zero and zero emissions equipment for on-terminal and on-road applications. The ports are supportive of State incentive funding to accelerate the market penetration of zero and near-zero emissions equipment beyond the rate of natural turnover. As a valued partner in the San Pedro Bay Ports Technology Advancement Program, we welcome the State and South Coast Air Quality Management District's commitment to help our industry make this transition while supporting our economic competitiveness by providing support to fund demonstration and deployment of clean technologies in port operations.

The State SIP Strategy contains four measures entitled "Further Deployment of Cleaner Technologies," which collectively commit to reduce approximately 70% of NOx emissions by 2023 and another 45% by 2031. As noted above, the ports support incentive-based programs and the advancement of technologies. However, the ports are concerned that these measures are too ambiguous to allow the ports sufficient opportunity to comment. The ports request the Air Resources Board clarify the regulations and/or technologies that are envisioned for these measures in the final State SIP Strategy, given that the emissions reductions are already quantified.

[1] California Air Resources Board. Proposed 2016 State Strategy for the State Implementation Plan, May 17, 2016.

Areas of Concern

- Freight Hub Approach

The ports recognize the need to pursue aggressive actions to reduce air quality impacts in the South Coast Air Basin and fully support the proposals to identify and increase funding to support incentives to achieve emission reductions within the maritime goods movement industry. However, the State SIP Strategy states that regulatory actions comprise the core of the overall attainment strategy and focuses overwhelmingly on emission reductions from maritime goods movement sources, either through existing technologies or "further deployment of cleaner technologies." The Air Resources Board also calls on air districts, and specifically SCAQMD, to increase rulemakings that achieve a "fair share" of emission reductions. The State SIP Strategy indicates that SCAQMD is pursuing "enforceable mechanisms under local authority" and "proposing a complementary suite of mobile source measures to facilitate implementation of the State SIP Strategy." Thus, by design, the State SIP Strategy requires SCAQMD to regulate goods movement sources, even though these sources are statutorily outside of an air district's authority. (42 U.S.C. § 7543; Cal. Health & Saf. Code § 40000.) SCAQMD has historically implemented incentive-based programs to accelerate mobile source turnover, but the State SIP Strategy demands more.

To meet its "fair share," the June 30, 2016, version of the SCAQMD's Air Quality Management Plan includes four "Facility-Based Mobile Source Measures." The ports are particularly concerned with SCAQMD's proposed *Mobile Source Measure MOB-01: Emissions Reductions at Commercial Marine Ports*[2] because it would implement the "freight hub," "facility cap," and/or "freight facility performance targets" approach opposed by the ports. As the ports have stated on numerous occasions in comment letters to the air regulatory agencies, most recently in the ports' comment letters on the California Sustainable Freight Action Plan (CSFAP), the ports strongly oppose any concept of a "facility-based" indirect or mobile source measure, whether it is referred to as a "freight hub" rule, "facility cap", "freight facility performance target," "indirect source rule," or "backstop rule." These indirect source rule concepts would inappropriately delegate to the ports the regulatory responsibility to achieve emission reduction from sources over which they do not have jurisdictional authority, ownership or operational control.[3]

---

[2] South Coast Air Quality Management District. Draft 2016 Air Quality Management Plan. June 2016

[3] Comment Letters to U.S. Environmental Protection Agency dated November 19, 2015; California Air Resources Board dated March 25, 2014; South Coast Air Quality Management District dated January 15, 2014, January 31, 2014, October 2, 203, August 21, 2013, October 31, 2012, and August 30, 2012

As recently as June 20, the Air Resources Board testified at an Assembly Information Hearing on the California Sustainable Freight Action Plan (CSFAP) that it will pursue an "emissions performance target for freight facilities like rail yards and ports." The potential development of rules and regulations around an "emissions performance target," especially if applied to a large seaport as a single "freight hub or facility" remains a concern for the ports. Historically, we have worked in cooperation with ARB on the implementation of regulations that apply to mobile sources used for goods movement throughout the state. We believe a collaborative, voluntary approach will continue to be the most effective means for controlling emissions from goods movement activities within the jurisdiction of seaports. As such, we are concerned that a facility cap or performance target – as a rule, regulation, or as a measure in the State Implementation Plan – would diminish the effectiveness of our historic partnership and fundamentally run counter to the objectives of the Governor Brown's Executive Order B-32-15. A freight hub, facility-based cap, or freight facility performance targets approach will have serious negative effects on maritime commerce and impede the State's freight competitiveness, directly in conflict with the goals of the Governor's Executive Order to improve freight transportation efficiency and increase competitiveness of California's freight system.

Practical implementation problems also include how to define the activities for which the freight hub is legally accountable, and the need to align the responsibility for compliance with the freight hub's ability (or lack thereof) to control the emissions-producing equipment and operations. At present, it appears that ARB proposes to view the freight system in segments and focus on emissions and/or efficiencies within each segment. We request that the term "freight hub" and "freight facility performance targets" be defined and we would oppose these concepts if implemented as regulation over the entire seaport, or worse, the two ports of Los Angeles and Long Beach, as a single "freight hub" or "facility". [4]

Furthermore, ARB currently collects data for freight-related on- and off-road mobile sources. The CSFAP suggests that the state may use the emissions data specifically attributable to each "freight hub" to support an eventual regulatory plan that will be used to develop the emissions

[4] The San Pedro Bay in Southern California is a single bay divided into two ports that are owned separately by the Cities of Los Angeles and Long Beach each receiving separate Tidelands grants from the State of California and operated as separate ports of Los Angeles and Long Beach. Unlike some other U.S. Ports in other parts of the United States in which an agency both owns the port land and operates the port operations, called "operating ports," the Ports of Los Angeles and Long Beach are "landlord ports" that lease the land to marine terminal operators. It is the marine terminal operators that operate the marine terminals, have contracts with shipping lines, railroads, logistics companies and other parties in the goods movement chain. Each terminal is operated separately and has different contracts with its own contract parties. The ports do not own, operate or control through contracts, the actual mobile sources used in goods movement. International and Federal preemption apply to the ports' ability to regulate goods movement mobile sources. The ports are also not U.S. air regulatory agencies and lack authority to regulate mobile source or stationary source emissions.

inventories for Air Quality Management Plans and State Implementation Plans in the future. Because "freight hub" is not defined, other than to identify examples of freight hubs such as seaports and airports, we feel the concept is ambiguous and could encompass activities that purport to hold the ports responsible for emissions that the ports do not control.

There are legal authority issues with imposing a "freight hub," "facility cap", "freight facility performance target," and now the "facility-based mobile source measures" proposed by SCAQMD, because each of these approaches treats a seaport as an indirect source under an Indirect Source Review Program. ARB is prohibited from regulating indirect sources or, significantly, from requiring air districts to regulate them. (42 U.S.C. § 7410(a)(5)(D)(i); Health and Safety Code, §§ 39002, 40414, 40440, 40468, 40717.5(c)). ARB's freight hub or facility-based cap approach is also an unlawful land use measure. (42 U.S.C. § 7431; Cal. Health and Safety Code, § 40414.) The air quality authority conferred on ARB and the air districts is expressly precluded from infringing on land use authority. (Cal. Health and Safety Code, § 40717.5(c).) The Cities of Los Angeles and Long Beach, and not ARB or local air districts, are the public agencies with the legal responsibility to manage their seaports within their jurisdictional boundaries for public trust purposes including maritime commerce, navigation, fisheries and water-dependent public uses. Moreover, the freight hub, facility-based cap, freight facility performance target, and facility-based mobile source measures would unlawfully require the ports to regulate emissions outside of their jurisdictional boundaries and regulate vessels subject to the international MARPOL Treaty. (U.S Const.. art. 6, cl. 2; 33 U.S.C. §§1901 et seq.)

We request that the final SIP Strategy exclude reference to the freight hub, facility-based cap, freight facility performance target approach, as well as any other iteration of these concepts. In addition, while the ports agree with prioritizing funding programs to encourage early actions in the region, we emphasize that any sort of regulatory strategy should not preclude the industry's ability to secure grant funding for their early actions, nor should any regulatory requirements be applied only to the region. Such an approach would be counter to the state's economic competitiveness goals and would put the freight operators within the South Coast at a disadvantage. For example, facility emission caps or port backstop rules could effectively disqualify those companies and agencies from receiving grants because grant funds cannot typically be used for regulatory compliance.

The ports appreciate this opportunity to provide comments on the State SIP Strategy. We look forward to continuing to work with the California Air Resources Board on advancing our shared goals for clean air in the South Coast region.

Sincerely,

Heather A. Tomley
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

cc: Mary Nichols, Chair, California Air Resources Board
Richard Corey, Executive Officer, California Air Resources Board
Cynthia Marvin, Division Chief, California Air Resources Board
Wayne Nastri, Acting Executive Officer, South Coast Air Quality Management District