



Legislation Text

File #: 07-0039, **Version:** 1

Recommendation to request City Attorney to file a motion in US District Court to intervene in Pacific Merchant Shipping Association (PMSA)
v. Witherspoon (Case No. 2:06-CV-02791-DFL-KJM).

The City of Long Beach 2010 Strategic Plan calls for the coordination with other jurisdictions in the air basin to establish air quality plans and implementation programs, particularly with regards to interstate and international commerce (aircraft, ships, trains and diesel trucks) to improve air quality (Goal E4). The Port of Long Beach took a significant step towards achieving this goal when it adopted the San Pedro Bay Ports Clean Air Action Plan (CAAP) and supported the adoption of a California Air Resources Board (CAR B) rule to require container and cruise ships to use low-sulfur fuels in their auxiliary engines within 24 nautical miles of the California coastline. The projected 75% reduction in particulate matter (PM), 80% reduction in SO_x, and 6% reduction in NO_x emissions are the most significant control measures, within the Air Quality Management District's Draft 2007 Air Quality Management Plan, to obtain compliance with Federal Clean Air standards for ozone and PM_{2.5}.

The Pacific Merchant Shipping Association (PMSA) is challenging the CARB rule in US District Court (PMSA v. Witherspoon) on several grounds: preemption by the Clean Air Act, preemption by the Submerged Lands Act, preemption by the Ports and Waterways Safety Act, and preemption based on the Commerce Clause of the U.S. Constitution. If plaintiffs were to prevail in this lawsuit, not only would CARB's existing and planned marine vessel regulations be invalidated and depending on the scope of the decision the Ports of LB/LA CAAP measures could be jeopardized.

I am requesting the City Council's support for authorizing the City Attorney to file a motion to intervene in PMSA v. Witherspoon (Case No. 2:06-CV-02791-DFL-KJM). It is important for Long Beach to participate in this case giving the efforts at the Port of Long Beach and throughout the region to clean the air that we breathe.

Approve recommendation.

COUNCILMEMBER BONNIE LOWENTHAL, FIRST DISTRICT
COUNCILMEMBER TONIA REYES URANGA, SEVENTH DISTRICT