

GAO

Fact Sheet for the Honorable  
Norman D. Shumway,  
House of Representatives

February 1987

# AIR POLLUTION

## EPA Enforcement of Air Quality at the Port of Stockton, California



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United States  
General Accounting Office  
Washington, D.C. 20548

Resources, Community, and  
Economic Development Division

B-222019

February 20, 1987

The Honorable Norman D. Shumway  
House of Representatives

Dear Mr. Shumway:

In your September 19, 1986, letter and subsequent discussion with your office, you requested that we obtain information on allegations by the Director, Port of Stockton, Stockton, California, of inequitable enforcement of the Clean Air Act by the Environmental Protection Agency's (EPA) Region 9 office in San Francisco, California. This fact sheet summarizes the results of our work discussed during the briefing with your office on November 6, 1986.

The controversy over whether the Port of Stockton is in compliance with air quality emission standards has been going on for years. The director of the port believes that the port has received unwarranted scrutiny from federal and California air pollution control officials while other ports in California were violating air quality emission standards. However, EPA and California air pollution control officials told us that repeated inspections of the Port of Stockton were justified by past violations. As a result of these violations, the Department of Justice filed suit against the port in 1983. These officials also told us that some of the other ports believed by the director to have been violating pollution standards were investigated and generally no violations were identified.

EPA and the port agreed to settle the dispute without further litigation in July 1986 when they signed a consent decree. Under the decree signed by a U.S. district court in October 1986, the port agreed to modify its operations, install additional air pollution control equipment, and pay a penalty for alleged past violations. EPA regional officials told us they hope the modified operations and additional pollution control equipment will bring the port into compliance.

We performed our review during October through December 1986. To obtain information on the director's allegations and EPA inspections at the Port of Stockton and other ports, we interviewed the port director in Stockton,

California; staffs of EPA's Region 9 Air Management Division and Office of Regional Counsel in San Francisco, California; and the Chief, Compliance Division, California Air Resources Board in Sacramento, California. In view of the resolution of this issue through the consent decree, we did not attempt to verify the information provided.

We reviewed correspondence between the Stockton port director and your office pertaining to EPA and Air Resources Board inspections and enforcement actions, EPA reports of inspection at the Port of Stockton and other ports, and EPA contractor-prepared reports on pollution control studies at various California ports. We also reviewed information provided by the California Air Resources Board as well as pertinent legislation and regulations. We discussed this fact sheet with an EPA regional official who generally agreed with its contents.

As arranged with your office, unless you publicly release its contents earlier, we will make this fact sheet available to other interested parties 14 days from the date of this letter. At that time copies will be made available to appropriate committees; the Director, Office of Management and Budget; the Administrator, Environmental Protection Agency; and other interested parties. If you would like further information, please call me on (202) 275-5489.

Major contributors to this fact sheet are listed in appendix I.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Hugh J. Wessinger". The signature is fluid and cursive, with the first name "Hugh" being particularly prominent.

Hugh J. Wessinger  
Senior Associate Director

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ABBREVIATIONS

ARB	Air Resources Board
EPA	Environmental Protection Agency
GAO	General Accounting Office
RCED	Resources, Community, and Economic Development Division

## SECTION 1

### ALLEGATIONS OF UNEQUAL ENFORCEMENT

#### OF THE CLEAN AIR ACT

##### BACKGROUND

The Congress enacted the Clean Air Act to protect and enhance the quality of the nation's air to promote public health and welfare. The act gives the Environmental Protection Agency (EPA) authority to establish and enforce national standards for air pollutants.

The act requires each state to submit to EPA for approval a state implementation plan specifying how the national standards for each pollutant would be achieved and maintained. The plan is required to include emission limits for major sources of air pollution and schedules and timetables for adopting the measures necessary to assure attainment and maintenance of the national standards. While the act gives EPA authority to inspect sources subject to emission requirements, it provides that EPA may delegate the authority to perform inspections to state air pollution control agencies.

In California, local air pollution control districts have the primary responsibility to control air pollution from all nonvehicular sources. California law requires the districts to adopt and enforce rules and regulations and to implement air pollution control programs that assure that reasonable provisions are made to achieve and maintain both state and federal ambient air quality standards.

The California State Air Resources Board (ARB) is responsible for preparing the state implementation plan and for coordinating the activities of all levels of government to assure that reasonable provision is made to achieve and maintain ambient air quality standards. ARB is also responsible for reviewing the enforcement programs in each district and for determining whether reasonable efforts are being made to implement programs and enforce state and local rules and regulations.

For a number of years, EPA's Region 9 office located in San Francisco and the ARB have inspected the Port of Stockton and have notified the port of violations of air pollution regulations. The port director, however, has contended that EPA Region 9 was not enforcing the act in a fair and equitable manner. The director alleged that EPA continued to inspect the port even though it had made major improvements to pollution control equipment and that EPA more strictly enforced air pollution controls at the Port of Stockton than at other ports in the region.

PORT DIRECTOR CONTENDED  
INSPECTIONS UNWARRANTED

The port director contended that for years EPA Region 9 and ARB inspectors have been performing unwarranted inspections at the port and requiring unnecessary actions to reduce particulate emissions (dust from loading and unloading various materials). However, in an effort to reduce these emissions and resolve the disputes with EPA, the port as of 1984, expended over \$3 million for equipment and facilities, according to the director. In spite of the improvements, the director contended, EPA and ARB inspectors continued to subject the port to prolonged inspections and EPA continued to cite the port for occasional, intermittent emissions that violated standards.

According to EPA regional officials, ARB and the control district have primary responsibility in California for enforcing pollution control measures. EPA's primary role is to oversee the efforts of the ARB and the control district; EPA does not become involved in direct enforcement actions as long as the districts carry out effective enforcement programs. However, EPA is responsible for direct enforcement action when a control district is not taking effective enforcement action. This was the situation with the control district responsible for the Port of Stockton.

The EPA officials informed us that the region became involved at the Port of Stockton when regional staff noted that (1) the control district had granted numerous variances (orders allowing a source to remain in operation while exceeding emission standards) and (2) while issuing notices of violations for excessive pollution, the control district had not followed up on the violations, imposed fines, or taken other enforcement actions. Because many of these variances and notices of violations involved the Port of Stockton, EPA made on-site inspections of the port and, in 1980, issued a notice of violation for the port's coke-handling operations. According to the EPA officials, however, the agency has not issued notices of violation or taken further enforcement action for other ports in the region.

The ARB also became involved with the Port of Stockton situation through a review of variances issued by control districts in the state. According to ARB, during the period from December 1973 to July 1981, the control district responsible for enforcement at the port issued 30 variances to port facilities in the name of the Port of Stockton and/or associated stevedore companies. Upon learning that the control district was taking no action with respect to the notices of violation it had issued to port facilities, ARB began to inspect the port and issue notices of violations.

EPA regional officials informed us that the region continued to perform inspections at the port to determine if it was

correcting the pollution problems. According to these officials, the corrective actions were not always effective and other violations of emission requirements were identified.

In this regard, our review of reports provided by EPA in response to Congressman Shumway's request for all EPA inspection reports on ports in region 9 for the last 10 years showed that from August 1980 to August 1985 EPA inspected the port 17 times. During these inspections, EPA inspectors reported observing emissions from various port operations. The inspectors also observed the construction of new facilities and the addition of pollution controls at the port. They noted, however, that the port had not obtained required permits for the construction of some of these facilities.<sup>1</sup>

According to EPA officials, as a result of the inspections and observed violations, the Department of Justice filed suit in July 1983 against the Port of Stockton. The suit alleged that the port violated the Clean Air Act and a requirement under the state implementation plan pertaining to particulate emissions. The suit also alleged that the port had constructed a facility without the required EPA permit.

DIRECTOR CONTENDED PORT OF STOCKTON SUBJECTED  
TO STRICTER ENFORCEMENT THAN OTHER PORTS

The director stated that while EPA and ARB were inspecting the Port of Stockton, citing it for emission violations, and requiring it to make improvements to its equipment and facilities, other area ports were operating with little or no emission controls. Further, he stated that some of the cargoes being unloaded at these ports had been turned down by Stockton because they could not be unloaded in compliance with pollution requirements. He also said Stockton was losing cargoes because, as a result of the costly emission control improvements made at Stockton, it was no longer competitive with other ports.

As a result of EPA and ARB activities, the director contended, Stockton lost millions of dollars to other ports, many of which did not have the same level of emission controls as did Stockton. Specifically, he cited ports such as Richmond, Antioch, and Pittsburg, where he said cargoes were being unloaded on open docks with no or only partial controls over emissions. Over the

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<sup>1</sup>Under federal regulations (40 C.F.R. §52.233(g)) owners or operators of sources of pollution in listed control districts (including the port's district) may not construct or modify facilities until they show that the source will not interfere with the attainment or maintenance of national air pollution standards and obtain written approval from the district or EPA, as appropriate.

years the director has identified specific instances of cargoes lost to other ports with lesser pollution controls, including

- a shipment of bauxite and a shipment of cement clinker (unground cement in gravel-like form) lost to the Port of Richmond and unloaded on the open dock;
- a shipment of bauxite lost to the Port of Antioch and unloaded on the open dock; and
- a shipment of limestone lost to the Port of Pittsburg, which has no emission controls.

With respect to the director's statements regarding the lack of pollution control at other ports in the region, an EPA regional official informed us that EPA did not investigate the allegations but did ask the Bay Area Air Quality Management District--the control district responsible for the ports in question--to check out some of the allegations. For example, this official said the control district personnel observed the unloading of cement clinker on the dock at the Port of Richmond but did not observe any violations. He also said that he had asked the control district to check out an allegation regarding the Port of Pittsburg--he believes for the handling of urea (fertilizer)--and it found no violations.

The Chief of the ARB's Compliance Division told us ARB investigators along with Bay Area inspectors visited the ports of Richmond, Antioch, and Pittsburg and did not observe any violations.

Additionally, an ARB memorandum showed that ARB had investigated the director's allegation that during the week of June 19, 1983, the port had turned down a shipment of bauxite ore because it could not be unloaded in compliance with emission regulations and that the shipment was subsequently unloaded at the Port of Antioch in apparent violation of visual emission rules. The memorandum stated that ARB investigators had identified a ship unloading bauxite ore during that period. This ship, however, did not stop at Stockton, but rather came directly to Antioch with only one stop, at Vancouver.

According to the ARB memorandum, a shipment of bauxite was delivered approximately once a year to Antioch specifically for the use of a nearby chemical company. The memorandum also stated that three Bay Area inspectors observed the ship unloading for periods of up to an hour at various times during the 36-hour unloading period and did not find the unloading to be in violation of the visible emission regulation.

According to the Chief of ARB's Compliance Division, in late 1983 and early 1984, ARB investigated other allegations of shipments that were (1) turned down by Stockton because they could

not be unloaded in compliance with visible emission regulations and (2) lost to other ports that did not have the same quality of pollution controls as did Stockton. Table 1.1, prepared by ARB, shows the results of these investigations. This table indicates that generally the shipments were handled in accordance with regulations at these other ports.

In addition to the Port of Stockton, EPA also inspected the Port of Redwood City, California. This inspection was carried out jointly with ARB on June 27, 1985. According to the EPA and ARB reports, inspectors observed cement-unloading operations at two facilities. No violations were observed at one of the facilities. At the other facility, the inspectors observed emissions coming from the hold of a ship unloading cement. The ARB report stated that ARB inspectors documented a violation of the local air pollution control district regulations. Information obtained from ARB showed that a notice of violation for the ship unloading was subsequently issued to the Port of Redwood City.

RESOLUTION OF STOCKTON/  
EPA DISAGREEMENT

Recognizing that it would be in the best interests of both parties to settle the dispute without further litigation, EPA and the port entered into a consent decree in July 1986. The decree was signed on October 14, 1986, by the U.S. District Court, Eastern District of California.

Table 1.1: Cargoes Declined by Port of Stockton

<u>Material</u>	<u>Approximate tonnage/Yr.</u>	<u>Alternative port handling material</u>	<u>Reason why and/or how port handles material</u>
Bauxite	20,000	Richmond	Small amount of bauxite being handled/users of material located in Bay Area/District observed no visible emission violations, thus in compliance with District regulations.
Bentonite clay	24,000	Portland, Ore.	Handles clay because the company is not assessed the inland haul expense.* Amount of clay has increased 10% a year for past three years. Clay unloaded in compliance.
Open dock unloading of rutile ore	10/15,000	Pittsburg	According to the Pittsburg berth personnel, this material is still being handled by the Port of Stockton.
Open dock unloading of urea	20,000	Sacramento	The amount of urea has not increased at the Port of Sacramento within the last year. Urea handled by covered conveyor system and in compliance with District regulations.
Coke loading on certain vessels	At least 20,000	Sacramento	The amount of coke has not increased at the Port of Sacramento within the last year. Coke is handled by covered conveyor system and in compliance with District regulations.
Magnesite	10,000	Sacramento	The Port of Sacramento has not handled this material for several years.

\*It costs an average of \$10-\$11 per ton to haul a product in and out of an inland port.

GAO Note: This table was prepared by California State Air Resources Board, Compliance Division.

The decree provides that the port shall, among other things, do the following.

- Apply dust suppressant to all materials handled on conveyors or being loaded in trucks or handle or load such materials on conveyors or in loading areas that are permanently enclosed.
- Modify its cement ship unloading operations to prevent all violations of the particulate emission regulations.
- Modify a rail car dump to allow the use of a dust suppressant or under certain conditions permanently enclose the rail car dump.
- Operate and maintain its activities to ensure compliance with the visual emission regulations.
- Pay a civil penalty of \$90,000 in settlement of past violations alleged in the suit.

MAJOR CONTRIBUTORS TO THIS REPORT

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