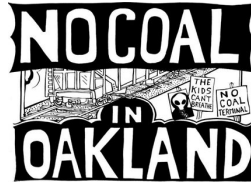




**RAINFOREST
ACTION NETWORK**



FOR IMMEDIATE RELEASE

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April 16 2020

Japan's Third Largest Bank - SMBC Group - In Discussions To Finance New Coal Export Terminal in California Amidst Pledge to Quit Coal Power

Oakland, CA -- Today, **Sumitomo Mitsui Financial Group** (SMBC Group) [announced](#) that it will "in principle" not finance any new coal power projects, with some exceptions.(1) In response, advocates for environmental justice and public health in Oakland, California, called on the bank to drop its plans to finance a widely opposed coal export terminal planned in Oakland, which would supply millions of tons of coal for overseas coal power plants.

SMBC, Japan's third largest bank, has been involved in discussions with Insight Terminal Solutions (ITS), over financing of the highly controversial marine terminal in Oakland, California, U.S. that would be used to ship four million metric tons of coal annually from Utah to plants operated by Japanese energy giant [JERA](#). Burning this coal would result in over 8 million tons of CO₂ emissions/year.(2) According to a sworn declaration filed in a Kentucky, U.S., bankruptcy court by John J. Siegel, Jr., the CEO of ITS, JERA's banker "SMBC discussed providing the full construction financing of approximately \$240 million USD to build the Terminal." (3)

No Coal in Oakland, a grassroots group that has opposed the coal terminal for five years, pressured the Bank of Montreal to abandon the project and is strongly opposed to SMBC's involvement.

"Dust from storing and handling coal at the terminal would increase the adverse health impacts in a community that already has high rates of asthma as well as deaths from cancer, heart disease, and stroke. We in Oakland will fight any attempt to build a coal terminal here," said **Ann Harvey of No Coal in Oakland**.

In July 2013, the City of Oakland signed a development agreement for a multi-commodity terminal on the Oakland waterfront, later known as Oakland Bulk and Oversized Terminal (OBOT). After learning that the developers were planning to use OBOT to transport coal overseas, the Oakland City Council unanimously enacted a city-wide ban on the storage and handling of coal. This ban is the subject of a federal lawsuit that is currently on appeal. Construction is stalled pending this decision and other legal and regulatory processes.

The terminal faces firm opposition across Oakland. The Oakland City Council, Oakland Mayor Libby Schaaf, thousands of city residents, and numerous local labor unions, faith leaders, health professionals and community organizations are all publicly opposed to the storage and handling of coal in Oakland. Any decision to finance the terminal would pose significant financial and reputational risks for SMBC.

"SMBC's financing of a new coal export terminal in Oakland would be grossly hypocritical given its recent pledge to get out of coal power in principle. It would also betray SMBC's endorsement of the UN Principles for Responsible Banking. From financing coal to fracked gas terminals, tar sands pipelines and even rainforest destruction, SMBC's portfolio is overrun with climate-related risks," said **Hana Heineken of Rainforest Action Network**.

SMBC poured more than \$59 billion into fossil fuels in the years following the Paris Climate Agreement. SMBC's financing of new coal plants around the world, particularly in Indonesia, Japan, and Vietnam, is opposed by a global coalition of climate activists and affected communities. (4)

"Recognizing that coal is a bad investment is a step in the right direction, but if the bank is serious about this commitment, then it should pull support for all new coal projects including the Oakland coal export terminal," said **Ben Cushing, Campaign Representative for Sierra Club's Beyond Dirty Fuels campaign**.

"SMBC should live up to its commitment to 'contribute to a sustainable society.' That means not financing the Oakland coal export terminal and ending financing for all fossil fuels on a Paris-compliant timeline," said **Susanne Wong of Oil Change International**.

Notes to Editors:

- (1) On April 16, SMBC Group announced significant updates to their financing policies, including adoption of a policy to stop financing all new coal-fired power plants in principle. However, the policy allows for exceptions, including plants that are ultra-supercritical or committed to before May 1 2020. The new policy also applies the Equator Principles to coal mining and excludes mountaintop removal. Details on the policy can be found here: https://www.smbc.co.jp/news_e/e600579_01.html
- (2) Calculations are based on an [EPA endorsed formula](#). Transporting coal to Oakland by diesel locomotive would result in an additional 1 million tons of CO2 emissions/year (Source: [Siting energy facilities at Glasgow Air Force Base, Volume 3](#)), and shipping the coal to Japan would result in further emissions.
- (3) A copy of the relevant sections in the bankruptcy proceeding document as well as additional background information on the terminal project is included in the Appendix below. A copy of the full bankruptcy document is available upon request.
- (4) For more information on SMBC's risky financing, see <https://www.endcoalsmbc.com/>

Appendix:

Background on SMBC plans to fund proposed coal export terminal in Oakland CA

SMBC has discussed financing the \$240 million construction of a coal export terminal in Oakland, California, with Insight Terminal Solutions (ITS), the operator of the proposed terminal. Financing this terminal would expose SMBC to significant financial and reputational risks, including substantial stranded asset risk because of the economically and environmentally toxic nature of coal. It is highly unlikely that the coal terminal will ever be built in Oakland--it has already been delayed five years due to massive local opposition, a city-wide ban on storage and handling of coal, and two ongoing lawsuits. ITS has no experience building or operating such a terminal and is currently in bankruptcy proceedings. Furthermore, financing the Oakland coal terminal would be inconsistent with the UN Principles for Responsible Banking, the Equator Principles, and several other SMBC commitments to social and environmental responsibility.

John J. Siegel, Jr., is the CEO of ITS, a company he created to build and operate the Oakland Bulk and Oversized Terminal (OBOT). According to a bankruptcy court declaration filed by Mr. Siegel on August 22 2019, Mr. Siegel has had ongoing discussions with JERA and SMBC at least since February 2019, and met with a JERA representative in Tokyo around April 23 2019 (see excerpted court documents below).

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

IN RE:)	
)	
INSIGHT TERMINAL SOLUTIONS, LLC, <i>et al.</i>)	CASE NO. 19-32231
)	
Debtors)	Jointly Administered
)	Chapter 11 Cases
_____)	

**DECLARATION OF JOHN J. SIEGEL, JR. IN SUPPORT OF
DEBTORS' OBJECTION TO AUTUMN WIND LENDING, LLC'S
MOTION TO DISMISS**

I, John J. Siegel, Jr., make the following declaration under penalties of perjury and pursuant to 28 U.S.C. § 1746:

1. I make this Declaration in support of Debtors' Insight Terminal Solutions, LLC ("ITS"), and Insight Terminal Holdings, LLC ("ITH", and together with ITS, "Debtors") Objection to Autumn Wind Lending, LLC's Motion to Dismiss the Debtors' Chapter 11 Cases Pursuant to 11 U.S.C. § 1112 (the "Objection"). I have personal knowledge of the facts and information described herein.

21. During this period, ITS began and has continued to advance discussions with JERA Co., Inc. (“JERA”), the post Fukushima disaster successor to Tokyo Electric, whereby JERA would provide a guarantee to purchase up to four million (4,000,000) metric tons annually of coal to be shipped through the Terminal. JERA brought its bank, the Sumitomo Mitsui Bank Corporation (“SMBC”) to ITS, and SMBC discussed providing the full construction financing of approximately Two Hundred Forty Million Dollars (\$240,000,000.00) to build the Terminal.

**Insight Terminal Solutions, LLC
2018 and 2019 Travel to Relating to the Oakland Project**

	City	Departure Date	Return Date	Duration	Traveler	Name of Person Met	Company	Position
12)	Oakland, CA	3/7/2019	3/7/2019	1	Jim Wolff Adam Rosen Jim Dillman	William I. Koch	Oxbow Carbon LLC B Riley FBR, Inc. James Dillman Consulting	President Managing Director Consultant
13)	Oakland, CA	3/20/2019	3/22/2019	2	John Siegel Jim Wolff	Marshawn Lynch Joshua Johnson Doug Hendrickson	Fam 1st Family Foundation West Oakland Youth Center Wasserman	Executive VP Football
14)	Oakland, CA	3/26/2019	3/29/2019	2	John Siegel Jim Wolff	Rebecca Kaplan Cestra Turner	Port of Oakland	President of the Board of Port Commissioners
15)	West Palm, FL	4/9/2019	4/10/2019	1	Jim Wolff Lisa Jarrett Adam Rosen	Roy Schorsch	Oxbow Carbon LLC	Executive Vice President
16)	Oakland, CA	4/11/2019	4/12/2019	2	John Siegel Jim Wolff	Marshawn Lynch Joshua Johnson Doug Hendrickson	B Riley FBR, Inc. Fam 1st Family Foundation West Oakland Youth Center Wasserman	Managing Director Executive VP Football
17)	Tokyo, Japan	4/22/2019	4/24/2019	2	Jim Wolff Phil Tagami	Yasuhiro Makino	JERA- Tokyo	
18)	Tokyo, Japan	4/22/2019	4/24/2019	3	Jim Wolff Phil Tagami	Ysyato Uga	Mitsubishi Corp.- Tokyo	

1. SMBC would violate its financing policies and international commitments and risk reputational damage by financing the Oakland coal terminal

SMBC’s financing of a coal terminal in Oakland California would violate the following commitments made by SMBC:

- [UN Principles for Responsible Banking](#) (PRB), which SMBC endorsed in September 2019. Under the PRB, SMBC committed to align its business strategy with the Paris Climate Agreement. Coal expansion is fundamentally contradictory to achieving the Paris Agreement goals.
- [Equator Principles](#), which SMBC [adopted](#) in 2006 and would apply to project finance or project-related loans. The Equator Principles include a number of requirements, including effective stakeholder engagement by the recipient of the loan. This will be difficult given the strong local opposition in Oakland.
- [SMBC Credit Policy](#), which requires, among other things, that SMBC “will cease to provide financial support to borrowers engaged in businesses contrary to public responsibility, or which may have a significant negative impact on the global environment.” SMBC also makes a commitment to “ensure a smooth transition to a low carbon society.” Financing a brand new coal export terminal would violate these policy requirements.

Development of the coal terminal faces broad local opposition, which has already affected plans for the terminal. The primary lease for the OBOT property is for 66 years. ITS is now proposing to ship coal for no more than 20 years, calling this a concession to the widespread opposition to coal. In a May 2016 poll by a state senator, 92% of respondents opposed using the terminal for coal. In June and July 2016, the City Council voted unanimously to ban coal with the strong support of the mayor, as requested by:

- more than 100 community organizations
- letters from thousands of residents of Oakland and nearby communities
- more than 60 individual labor unions
- the Alameda County Central Labor Council, which represents 135,000 workers
- Local 10 of the International Longshore Workers Union (ILWU), which is contractually entitled to provide the labor force at Bay Area marine terminals
- more than 40 faith leaders
- more than 100 health professionals

If SMBC undertook to finance the coal terminal in Oakland, it would face significant local and international opposition, similar to the Bank of Montreal (BMO) back in 2018. BMO initially attempted to finance construction of the terminal despite it being a signatory to the Equator Principles. No Coal In Oakland and allies mounted a campaign against BMO's involvement, including demonstrating and leafleting at conferences of investors in 2018. Press coverage included [this coverage of a demonstration at a Principles for Responsible Investment \(PRI\) annual conference](#) and [this coverage of a letter to the BMO CEO](#), as well as television coverage such as [this story](#) about a youth protest at BMO's San Francisco office. Papers filed by ITS in its bankruptcy proceeding indicate that BMO abandoned interest in financing the project.

2. Financing the Oakland coal terminal would pose significant financial risks

ITS faces significant legal and regulatory challenges, which jeopardize the future of this project. These challenges include the following:

- a. ITS is at risk of losing its authority to develop the property that would house the terminal.
 - The City of Oakland, which owns the property, has terminated the underlying primary lease with OBOT.
 - A lawsuit brought by OBOT for damages and reinstatement of OBOT's lease is on hold and awaiting a ruling on the City's motion to dismiss.
- b. The future of ITS is unclear due to ongoing bankruptcy litigation in the state of Kentucky, which could lead to a different entity holding the sublease.
- c. The City of Oakland is currently in litigation to enforce its ban on coal against OBOT. The federal lawsuit regarding the legality of the ban is on appeal and awaiting a ruling. If Oakland's ban is upheld, the terminal cannot handle coal.

- d. Project proponents are likely to fail in obtaining necessary permits.
 - Regulators would need to approve construction and other permits and would require environmental impact review of the proposed terminal.
 - The terminal project is unlikely to survive environmental review required under the California Environmental Quality Act (CEQA), which will include an opportunity for public comment and allow submission of expert reports on environmental and public health dangers. The developer's claim to have all necessary approvals under CEQA is under dispute.
 - The air pollution mitigation technology proposed by ITS is untested and may not meet air quality standards.
 - Concern about coal storage and handling in a neighborhood already experiencing disproportionate environmental health impacts will result in close scrutiny of developer plans during the permitting process.

- e. Wolverine Fuels, the company proposing to ship coal through Oakland, is at risk of bankruptcy.
 - Wolverine Fuels is a recent reorganization of Bowie Resource Partners. Bowie tried and failed to raise \$510M to facilitate a takeover by Murray Energy Corp. in November 2017. Murray Energy Corp. declared bankruptcy in 2019.

The project also faces significant political challenges in the US, both locally and at the federal level. A new administration in Washington DC from 2021 and progressive international climate policy could jeopardize the viability of any new coal infrastructure in the US. Moreover, widespread opposition within Oakland was effective in obtaining support from a broad range of officials in the past, and current incumbents are likely to be responsive to the same concerns.

- Oakland's ban on coal has been consistently supported by the political establishment, including state assembly members, the state senator representing Oakland, eleven local mayors, several county supervisors, as well as city officials.
- The California attorney general filed a [brief](#) in 2017 on behalf of the State of California, opposing the lawsuit filed by OBOT to overturn the ban, and a second [brief](#) in 2018 in support of the city's appeal.
- California legislators passed a bill in 2017 to prevent future public financing being used to support expansion of coal transport infrastructure. While this bill would not retroactively apply to the terminal, it demonstrates strong political opposition to any new coal infrastructure in Oakland. Then California Governor Jerry Brown supported the Oakland ban in a [statement](#) when he signed this bill:
"The city of Oakland took an important step recently documenting the health and safety risks and climate impacts of coal and specifically banning its shipment through the city. Other localities should follow suit -- and the state should too -- to reduce and, ultimately, eliminate the shipment of coal through all California ports."

History

July 2013: City of Oakland signs a development agreement for a multi-commodity terminal on the Oakland waterfront, later known as Oakland Bulk and Oversized Terminal, OBOT. Under the development agreement, the site was later leased to an Oakland developer for 66 years.

April 2015: Oakland community members and the City Council learn that the developer had secretly cut a deal to export coal through Oakland.

July 2016: Oakland City Council unanimously enacts a city-wide ban on the storage and handling of coal.

May 2018: U.S. federal court judge rules that the City had not acquired sufficient evidence of danger to the health and safety of workers and neighbors to justify applying the ban to the planned terminal.

June 2018: City of Oakland and supporting environmental organizations appealed the federal ruling.

November 2018: City of Oakland notifies OBOT that the lease on the site is terminated due to the developer's failure to meet contractual deadlines.

December 2018: OBOT sues Oakland for damages. This case is on hold in California Superior Court because the City filed an immediate appeal challenging OBOT's right to proceed with the suit.

November 2019: Ninth Circuit Court of Appeals holds a hearing in Oakland's appeal of the May 2018 ruling. A decision is pending.

See <https://nocoalinoakland.info/our-campaign/> for more information

Photo: Oakland community opposition to coal

