

November 4, 2009

The Honorable Michael R. Bloomberg
Mayor of New York City
City Hall
New York, NY 10007

The Honorable Cory Booker
Mayor of Newark
City Hall, Room 200
Newark, NJ 07102

RE: Los Angeles Clean Trucks Program and FAAAA Amendment

Dear Mayors Bloomberg and Booker:

The undersigned national and state associations, representing importers, exporters, and the logistics industries and service providers that support them, are writing to express our grave disappointment in your October 19th announcement of support for the Port of Los Angeles' Clean Truck Program.

We fully support efforts by the ports, including the Port Authority of New York and New Jersey, to improve their air quality. However, there is absolutely no need for a change to longstanding federal law to achieve this goal, nor any justification on outlawing independent owner-operator trucking firms from serving our nation's ports.

The objective of the Port of LA's Clean Trucks Program that is both controversial and illegal under federal law is its design to eliminate the independent owner-operators from the port trucking business. We strongly oppose this objective, and we oppose amending the Federal Aviation Administration Authorization Act (FAAAA) as you have suggested to achieve it. We are also disappointed that you have taken such a position without consulting with the Port of New York and New Jersey's customers, and without considering the fact that such a change would in the end make the Port of New York and New Jersey much less competitive than it is today.

The members of the undersigned national associations move a substantial amount of the nation's international commerce through America's marine ports and along the surface transportation network of roads and rails. The harbor trucking industry is an integral component in the supply chains of U.S. industry that helps our nation's exporters and importers to reach markets overseas and replenish store shelves and assembly lines here in the United States.

We have an interest in making sure that the harbor trucking industry operates safely, efficiently and in an environmentally responsible manner. Many of our members are actively working with transportation providers to replace as quickly as possible the older harbor trucks serving marine terminals around the country with highly innovative clean equipment. As you noted in your press release, "over 5,500 new clean burning vehicles are on Southern California's roads, moving nearly 70 percent of all cargo - - three years ahead of schedule to meet emission reduction targets." This is a significant achievement that is occurring without a change in federal law.

The argument that port trucking services should be exempted from federal preemption in order to improve air quality is fallacious, and has nothing to do with clean air.

In 2007, the Port of Los Angeles' Clean Truck Program included a provision that would have banned any harbor trucking company from using independent owner-operator drivers, in favor of employee drivers and some other onerous economic-based regulations. These restrictions, advocated by the International Brotherhood of Teamsters, are designed to eliminate competition from small independent businesses in favor of companies that the Teamsters believe could be more easily organized.

In 2008, the American Trucking Associations (ATA) filed suit against the Port of Los Angeles and the Port of Long Beach¹ claiming that the truck concession portion of the Clean Trucks Program is preempted by federal law regulating rates, routes and service under the FAAAA. The ATA only challenged the concession provision and **not** the program components that contribute to air quality improvements.

The ATA requested a preliminary injunction which was granted by both the U.S. District Court for the Central District of California and was affirmed by the U.S. Court of Appeals for the 9th Circuit. Those courts determined that the ports' concession plans regulate interstate trucking "prices, routes, and services" and thus were preempted by the FAAAA.

The Port of Los Angeles, the NRDC, and the Teamsters seek to expand the exceptions to federal preemption legislatively in order to accomplish by statute an objective that the Courts found to be currently unlawful. In fact, the Court of Appeals recognized that federal preemption of interstate trucking services was designed to prevent a patchwork of burdensome state and local trucking rules as would be created by the Port of Los Angeles' concession plan.

The Port of Long Beach has settled their lawsuit with the ATA. According to Port of Long Beach Executive Director Richard Steinke: "The settlement ... clears the way for the Port and the trucking industry to move forward, together, with a program that has been highly successful in reducing air pollution." He went on to further say: "The NRDC's real objection to our program has nothing to do with clean air. By aligning itself with the Teamsters, who have been very public about their campaign to unionize port truckers nationwide, the NRDC is pursuing an agenda beyond air quality."

We support continued efforts to improve air quality at America's ports. These improvements will be achieved quickly without any change to federal law. Already in Southern California, the Clean Trucks Program has resulted in the removal of 5,500 dirty trucks from service and replaced them with new and cleaner equipment. A change

¹ The Port of Long Beach adopted a similar Clean Truck Program, including the requirement for drayage operators to sign concession contracts with the port; however, the Long Beach program did not ban independent owner operators from serving that port.

to federal law or the inclusion of an employee mandate is not required to advance this goal.

We hope that you will reconsider your position on this issue. It is time for us to work together in the common objective of improving air quality at our nation's ports, and to stop this poorly disguised effort to put law-abiding independent owner operators of clean trucks out of business.

Sincerely,

Agriculture Transportation Coalition
American Apparel & Footwear Association
American Association of Exporters and Importers
American Import Shippers Association
American Trucking Associations
Coalition of New England Companies for Trade
Fashion Accessories Shippers Association
Footwear Distributors and Retailers of America
Harbor Truckers for Sustainable Future Los Angeles / Long Beach
International Warehouse Logistics Association
NASSTRAC, Inc.
National Association of Waterfront Employers
National Industrial Transportation League
National Retail Federation
New Jersey Motor Truck Association
New Jersey Retail Merchants Association
New York State Motor Truck Association
New York Shipping Association
Pacific Coast Council of Customs Brokers & Freight Forwarders Assns Inc.
Retail Council of New York State
Retail Industry Leaders Association
The Health & Personal Care Logistics Conference, Inc.
Transportation Intermediaries Association
Travel Goods Association
U.S. Association of Importers of Textiles and Apparel
United States Council for International Business
Waterfront Coalition
West State Alliance, Oakland
World Shipping Council

CC: New York Congressional Delegation
New Jersey Congressional Delegation

Attachments: 1) Clean Truck Settlement a Boon for Clean Air – Statement by Port of Long Beach Executive Director Richard Steinke – 10/22/09
2) Wall Street Journal Opinion – Union Port of Call

Clean Trucks Settlement a Boon for Clean Air

A message from Richard D. Steinke, Executive Director of Port of Long Beach

The recent settlement of a legal challenge to the Port of Long Beach's Clean Trucks Program is good news, not only for the Port, but also for the cause of clean air. Why? Because the lawsuit was a potential roadblock. The settlement, however, clears the way for the Port and the trucking industry to move forward, together, with a program that has been highly successful in reducing air pollution.

The settlement reached earlier this week comes on the heels of the one-year anniversary of the Clean Trucks Program. In its first 12 months, the program has achieved a reduction of air pollution far beyond what was expected by this point.

In an industry where harbor drayage trucks are kept in service for decades, the Clean Trucks Program has already put more than 5,000 new, clean trucks into port service. These big-rigs, which meet the federal Environmental Protection Agency's strict 2007 emissions standards, are doing more than half of the truck hauling at the Port of Long Beach.

With the settlement of the lawsuit brought by the American Trucking Associations, the Port is more determined than ever to pursue and achieve the goals of the Clean Trucks Program.

Yet, we're facing criticism from one of the nation's largest environmental groups, the Natural Resources Defense Council (NRDC), which says we're abandoning our environmental goals by settling this lawsuit. That is simply false.

In fact, our environmental goals are being achieved much faster than expected. By January 1, 2010, the program will be nearly two years ahead of schedule in reducing truck air pollution by almost 80 percent. The NRDC said as much less than a month ago, in a news release praising the program for getting dirty trucks off the road.

The new system, agreed to by the ATA in the settlement, simplifies and streamlines our already successful Clean Trucks Program. It requires trucking companies to submit the same detailed information and enter into a binding contract to comply with all environmental, safety and security requirements in order to obtain access to Port terminals. Under the new registration system, trucking firms still will be required to register their trucks and equip them with electronic devices so we can verify that only clean trucks that meet our tough standards are entering our shipping terminals.

The NRDC's real objection to our program has nothing to do with clean air. By aligning itself with the Teamsters, who have been very public about their campaign to unionize port truckers nationwide, the NRDC is pursuing an agenda beyond air quality.

Now, as before, our top priority is achieving cleaner air. But we're determined to do it in a way that does not compromise the trucking industry's ability to move cargo. By

allowing both employee drivers and independent owner-operators in our program, we're letting the industry determine how it can best achieve our environmental standards.

We don't have any objection to employee drivers. In crafting the program, we simply decided to give the industry a choice. Under our plan, both larger firms and small business owners have the right to operate.

We can accept differences of opinion on that issue – but we won't accept the NRDC's false criticism that the ATA settlement is somehow compromising our environmental goals.

The program is working – well ahead of schedule. The settlement allows us to keep cleaning the air, and removes the last of the legal challenges to this very important tool for reducing air pollution.

We believe we have created a strong, sustainable model that has brought and will continue to bring clean trucks into port drayage.

Our goal with the Clean Trucks Program was to dramatically reduce the smog-forming and diesel particulate air pollution from port-related trucking. We've done that, and the settlement assures that we can continue to improve air quality while allowing cargo to keep moving as the air gets cleaner.

[REVIEW & OUTLOOK](#)

SEPTEMBER 16, 2009, 7:52 A.M. ET

Union Port of Call

Congress may abet a Teamsters takeover.

President Obama gave a corker of a campaign speech yesterday at the AFL-CIO convention in Pittsburgh, promising to deliver on his promise to ease the rules for union organizing. If you want to know what this means in action, consider the current Teamsters play to control California ports.

The dispute concerns the Clean Truck Program announced in 2007 by the Port of Los Angeles to ban the dirtiest trucks from carrying port cargo. L.A. Mayor Antonio Villaraigosa, a former union organizer, seized on the program as an opportunity to help his Teamster friends. Current law doesn't let the Teamsters organize independent truckers, some 17,000 of whom serve the ports of Los Angeles and Long Beach. So the mayor and his port authority pals wrote into their clean-truck rule a "concession program" banning harbor truck companies from contracting with independent drivers. The port would only allow "employee drivers," all of whom would be eligible for Teamster membership.

The American Trucking Association sued to block the rule, and with good cause. Federal law has long pre-empted state and local regulation of interstate trucking "prices, routes and services," for the reason that international and interstate trade depend on uniform regulation. The courts have recognized this, and even the Ninth Circuit Court of Appeals found that the new port rule had likely violated the Constitution's Commerce Clause, which led to a court injunction earlier this year. Trial on the merits of the rule has been set for next year.

Aware that he will probably lose in court, Mayor Villaraigosa is running to Washington for help. The Port of Los Angeles has hired former Majority Leader Dick Gephardt to press House Transportation Chairman James Oberstar to rewrite federal law and give local ports the authority to set more of their own regulations. Los Angeles is now arguing it needs this leeway for both "environmental" and "security" reasons. Never mind that the port admitted in July that nearly 60% of the containers moved in June had been handled by trucks that met the cleaner requirements.

Unionization would give the Teamsters enormous bargaining leverage over work rules and pay, sharply raising the cost of moving goods, as well the power to shut down ports in a strike. Some 32 trade groups, from farm organizations to the National Retail Federation, signed a recent letter to Mr. Oberstar opposing the legislation. The response of shippers would be to divert cargo to

Mexico or Canada, or pass through an expanding Panama Canal for ports on the Gulf or East Coasts. California doesn't need more reasons for business to flee the state.

The change in federal law would also mark a step away from the transportation deregulation that began in the 1970s and that has done so much to reduce costs and improve competition. The damage from a patchwork regulatory system would be felt nationwide, and all for the sake of Mr. Villaraigosa's union pals.