

*Via E-mail, Facsimile and U.S. Mail*

August 28, 2006

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**Re: Comments on the San Pedro Bay Ports Clean Air Action Plan**

Dear Dr. Knatz and Mr. Steinke:

These comments are submitted on behalf of the Los Angeles Alliance for a New Economy, along with our coalition partners. Our coalition includes labor, environmental, immigrant, religious and community groups such as Change to Win, Clergy and Laity United for Economic Justice, Coalition for Clean Air, Coalition for Humane Immigrant Rights of Los Angeles, Communities for a Better Environment, Harbor Watts Economic Development Corporation, International Brotherhood of Teamsters, Los Angeles County Federation of Labor and Natural Resources Defense Council.

The proposed Clean Air Action Plan (CAAP) is a far-ranging and ambitious document, unprecedented in terms of the coordination of the organizations behind it. It begins to address the goals of those Port officials who have been promising dramatic and fundamental change in the way Port operations are conducted in order to mitigate the Ports' environmental impact on the people and environment of Southern California. We applaud the aim of the document and the elected and appointed officials — as well as industry leaders — who helped craft the Plan. We wholeheartedly agree that significant changes are needed in order to (a) safeguard and improve the health of workers, neighbors and the greater Southern California community, (b) ensure the continued contribution of the Ports to our economy, and (c) guarantee that future growth and development is sustainable and beneficial to all stakeholders.

Along with local community members, the truck drivers at the Ports receive the brunt of the negative effects of Port-related pollution. Studies show that two areas are among the most affected by pollution in Southern California: communities surrounding the Ports, and communities along major roadways traversed by trucks.<sup>1</sup> Port truck drivers spend more time in these two areas than anyone else, not only because it is where they work, but also because many drivers live in the communities adjacent to the San Pedro Bay Ports. Drayage drivers are

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<sup>1</sup> See, for instance, MATES II, South Coast Air Quality Management District, March 2000.

significantly affected by the deleterious impact of diesel-related pollution and they are therefore committed to cleaning the air. It is the right thing to do, and drivers' health depends on it.

Reforming the way that Ports operate is a serious undertaking and it is critical that it be done correctly. The goals of the CAAP, as well as the methods of its implementation and maintenance, must be clear and, as we will continue to stress, must benefit all Port stakeholders. It is in this spirit of improving a well-intentioned Plan that we bring forth these comments.

We will address only those parts of the plan concerning the Heavy Duty Vehicle (HDV) Control Measures. While we enthusiastically support the goal of truck fleet modernization, we strongly believe that the current Plan does not go far enough in terms of a comprehensive approach to the trucking sector or in its temporal scope. The CAAP does not fully take into account major issues unique to Port drayage, creating weaknesses that limit the Ports' ability to improve air quality as dramatically as may be possible. In particular, the Plan must reckon not only with the real market forces operating on the Port truckers, but also with the significant and persistent structural problems in the industry. Without addressing these issues, the CAAP will, at best, be a temporary, one-time fix.

Finally, the Plan fails to demand appropriate participation by all stakeholders in the cost of remediation. As written, the CAAP appears over-reliant on public financing. Especially troubling is the assumption that the bulk of the financing would derive from the proposed transportation bond package— should it fail at the ballot box, the Plan risks becoming an unfunded shell.

## **THE PORT DRAYAGE MARKET**

Port truck drivers are essential to the functioning of the San Pedro Bay Ports, making them critical players not only in the largest industry in Southern California, but also in the most significant American Ports in international trade. As is the case for all Port workers, without these drivers, international trade as we know it would quite simply not work: Port drayage drivers are an indispensable link in the chain of commerce. Despite their critical role, however, these workers exist in a quasi-underground economy.

As the CAAP notes, no one knows how many unique trucks service the Ports. No one knows how many drivers work at the Ports on a regular basis. These drivers operate in a chaotic, fragmented market, dominated by hundreds of tiny, undercapitalized motor carriers and brokers contracting directly with either shipping lines or shippers. Massive consolidation within the retail sector and among ocean carriers, along with other market forces, has resulted in a dramatic shift in bargaining power toward the shippers, who demand ever-lower transportation costs. While this has had a negative impact on the ocean carriers, it has had a more profoundly negative impact on the trucking sector. Low barriers to entry and a lack of effective oversight have conspired with the pre-existing market forces to create a glut of under-resourced and highly exploitative motor carriers. The only way that many of these carriers can get work is to undercut market standards, creating a race to the bottom. The experience of other North American Ports

with similar market dynamics suggests that rates received by motor carriers are chronically below the actual cost of operations.<sup>2</sup>

The biggest losers in this system are the drayage drivers themselves. The motor carriers and brokers, themselves relatively powerless, pass on the effects of unequal competition to the drivers who contract with them. As sociologists at the University of California at Riverside note in a study of the Port economy, “everyone in the transportation industry surrounding the Ports recognizes that the Port truckers are at the bottom of the ‘food chain.’”<sup>3</sup> These workers are paid by the trip and on average earn roughly \$25,000 a year, generally receiving no health care or pension benefits.<sup>4</sup> From these meager earnings, drivers must pay for maintenance and insurance on their truck. This means that drivers often have to choose between replacing their tires and paying their rent. Indeed, a recent editorial in a trade publication noted that “in many cases, the drivers could make more money flipping hamburgers,” while another trade publication called the jobs “notoriously low-paying.”<sup>5</sup>

Drivers also typically work eleven to twelve hours per day. Because of Port congestion and inefficiencies, drivers regularly spend approximately 50% of their day simply waiting to pick up or drop off a container.<sup>6</sup> The jobs are “pursued only by the economically desperate,”<sup>7</sup> a fact reflected in the high turnover rate for Port truckers, which exceeds 130%.<sup>8</sup>

## **STRUCTURAL PROBLEMS IN THE MARKET**

There are two large-scale problems in how the Port trucking market is structured. Each of these will impede the implementation of the air quality improvements envisioned by the Plan. The first problem lies in the nature of the relationship between the Ports and the trucking companies, namely, the absence of any direct relationship. Because of this structural problem, no one at the Ports can account for drivers or their trucks in a coherent way. The steamship lines can account for their ships, the terminal operators can account for their equipment, the railroad companies can account for their trains, but the accountability disappears when it comes to trucking.

Port trucking is a highly fragmented market, with over 600 trucking companies operating at the Ports.<sup>9</sup> This fragmented trucking market has obvious implications for the Ports’ goal of getting

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<sup>2</sup> See, for instance, the Vancouver drayage drivers’ strike of 2005 and the resulting Vancouver Port Authority regulations.

<sup>3</sup> Edna Bonacich and Jake Wilson, *Getting the Goods: The Logistics Revolution and the Ports of Southern California*, 146, forthcoming.

<sup>4</sup> See, for instance, “Replacing Dirty Trucks: Big Hurdle in Port Cleanup Plan,” *Pacific Shipper*, 7/21/06 and “Study of Drayage at the Ports of Los Angeles and Long Beach,” Kristen Monaco and Lisa Grobar, Department of Economics, California State University Long Beach, April 2005.

<sup>5</sup> “The Green Connection,” *Pacific Shipper*, 7/13/06 and “Red Alert,” *Journal of Commerce*, 6/26/06.

<sup>6</sup> “Study of Drayage at the Ports of Los Angeles and Long Beach,” Kristen Monaco and Lisa Grobar, Department of Economics, California State University Long Beach, April 2005.

<sup>7</sup> “Watching the Waterfront,” *The New Yorker*, 6/19/06.

<sup>8</sup> Turnover estimate by the American Trucking Association for non-union truck drivers. (See “Spending Spree,” *Journal of Commerce*, 6/26/06.) Industry leaders with knowledge of Port trucking in particular estimate the drayage turnover rate to be even higher.

<sup>9</sup> PierPASS Program Review for the Port of Los Angeles, 9/28/05.

all stakeholders to “sign on” to the CAAP because no clear means exist to achieve sector-wide agreement or participation. This lack of accountability would make it difficult for the Ports to enforce any source-specific standards; in the best-case scenario, it would be an administrative nightmare, and in the worst-case scenario, it would be an invitation for fraud and manipulation. Some entity must take responsibility for the trucking sector and provide the oversight needed for change.

The second structural problem lies in the employment status of drayage drivers. Most motor carriers treat their drivers as “independent contractors” — the relationship is governed by a lease under which drivers accept virtually all of the risk of operation. The leases may be cancelled on short notice, and drivers change carriers frequently. It would be challenging enough to get agreement from trucking companies on any policy change, but the independent contractor system is designed to allow companies to disclaim responsibility for the ownership, condition, maintenance and operation of the trucks.

Because of the independent contractor status, there is no incentive for the trucking companies to bring any efficiency to a chaotic system. Drivers are paid only by the load, and it makes no difference to the trucking companies if the drivers have to wait hours in a line, inching forward with their engines running and polluting the air. It does, however, make a big difference to both the drivers and the surrounding communities. Annually, the inefficiencies associated with HDV idling alone account for over 3,100 tons of NO<sub>x</sub> (34% of all HDV-related NO<sub>x</sub>) and over 86 tons of DPM (46% of all HDV-related DPM).<sup>10</sup> If drivers were employees, their employers — the actual trucking companies under whose operating authority they carry loads — would have an immediate financial incentive to reduce wait times and improve efficiencies.

Changing the status of drivers to employees would also require trucking companies to invest in and maintain the trucks they operate. Under the status quo, trucking companies can avoid taking responsibility for the maintenance of the fleet, which has not only environmental implications, but safety implications as well. Currently, the entire cost of maintaining vehicles in a safe condition and replacing them when they wear out is entirely born by one-truck independent contractors without access to capital. These drivers do not possess the economic power in the marketplace to demand reasonable rates for their services, let alone to demand rates which would allow them to purchase and maintain environmentally clean and safely maintained trucks. Indeed, the Port drayage system operates almost totally within the “underground economy.”

The independent contractor status makes it impossible for the drivers to break out of this underground economy. It precludes them from engaging in collective action to improve their working conditions, and makes them vulnerable to exploitation by unscrupulous motor carriers through illegal leaseback schemes and fraudulent insurance arrangements.

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<sup>10</sup> Based on 8.2 million annual gate moves (San Pedro Bay Ports Clean Air Action Plan Technical Report, 45); 2.6 hours average wait time per trip (“Study of Drayage at the Ports of Los Angeles and Long Beach,” Kristen Monaco and Lisa Grobar, Department of Economics, California State University Long Beach, April 2005); 135 grams/hour NO<sub>x</sub> emissions and 3.68 grams/hour DPM emissions (U.S. Environmental Protection Agency, [www.epa.gov/smartway/idle-questions.htm](http://www.epa.gov/smartway/idle-questions.htm)).

These structural defects in the trucking sector, coupled with the aforementioned realities of the drayage market, all but doom the HDV portion of the CAAP to failure. The Ports recognize one manifestation of the problem, that these drivers “do not have the financial resources to acquire cleaner trucks on their own.”<sup>11</sup> But it is by no means a corollary that the solution is to simply provide trucks for the drivers. Unless drivers can make a decent living hauling containers to and from the Ports, even the newest, cleanest, most environmentally-friendly equipment will not be properly maintained. Given the overwhelming size of this workforce and the projected growth of Port traffic, it is easy to see that within five or ten years, the Ports will be back where they started— a major source of pollution in Southern California.

## **A LONG-TERM SOLUTION**

The seeds of a more comprehensive solution to the problem of pollution in the Port trucking sector are contained within the CAAP itself. First, the Plan states that the most effective method for implementing mitigation measures is to tie those measures to a lease or permit, such that failure to abide by those measures would be a contractual violation. Second, the Plan recognizes that “new relationships and business paradigms” are needed. Given the structural problems endemic in the drayage sector, the only way to achieve meaningful, long-term solutions to HDV-related pollution problems is by designing a new business model. Third, it is imperative that the system be designed in such a way that the cost of operating an economically viable and environmentally responsible Port trucking system is financed through the transportation rate structure. While subsidies and loan programs may be useful short-term tools, dependence on taxpayer-generated revenue to maintain truck fleets is unsustainable and bound to fail.

It is worth noting that the Ports have very broad authority over the operations in their purview. As explained by the California Harbor and Navigation Code, “notwithstanding the enumeration and specific statements herein of particular powers, the district may do and perform all acts and things necessary and appropriate to carry out the purposes of this part and the powers of the district.”<sup>12</sup> At least one California court has stated that the Legislature, in creating these powers, “intended to give the District(s) broad regulatory power over docking and harboring facilities.”<sup>13</sup> Additionally, the Cities of Los Angeles and Long Beach have each explicitly granted broad powers to the Ports, including the power to regulate, to provide for the needs of commerce, and to grant concessions.

More important than the regulatory power of the Ports, the Harbor Commissions are stewards of some of the public’s most valuable assets and have a powerful interest in maximizing their value. Air pollution and the related political opposition to expansion have prevented the Ports from maximizing the return on these assets. As landlords, the Ports have an obvious interest in safe and efficient trucking operations. Improved efficiency on the docks — reducing the hours- or days-long waits to move containers — would make the Ports more attractive to customers and would prevent the possibility of ocean carriers shifting services to less-congested Ports, resulting in a loss of revenue. It is certainly within the fiduciary responsibility, as well as the statutory

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<sup>11</sup> San Pedro Bay Ports Clean Air Action Plan Overview, 15.

<sup>12</sup> California Harbor and Navigation Code, §6310 (2006).

<sup>13</sup> *The People v. Queen*, 190 Cal. App. 3d 826, 830 (1987).

authority, of the Ports to do whatever possible to bring order to the current chaotic system. The best way to achieve efficiency, as well as the desired environmental mitigation measures, is to enter into some sort of direct contractual relationship with the trucking sector.

We propose that the Ports of Los Angeles and Long Beach jointly enter into a direct contractual relationship with responsible motor carriers to provide drayage services at both Ports, utilizing the same model employed by airports to provide food and other services to air travelers. The Ports should issue a competitive Request for Proposals (RFP) to all interested carriers or industry associations. By creating a direct contractual relationship with motor carriers, the Ports will be able to use the most effective tool at their disposal for addressing pollution control— a direct contract with a responsible entity. The RFP should then include clear standards concerning capitalization requirements, revenues paid to the Ports, environmental standards for trucking equipment operating at the Ports, other environmental mitigation measures and benchmarks, employee status for drivers, employment preferences for the current workforce of owner-operators, and labor peace requirements to ensure that revenue streams to the Ports are uninterrupted. We would also recommend that other important provisions be included in the RFP, such as homeland security standards, small and minority business enterprise participation rules, driver training and truck safety/maintenance standards.

This model has several benefits:

- (1) By creating a direct contractual relationship, the Ports will be able to mandate cleaner trucks as a condition for obtaining the right to conduct drayage operations.
- (2) By including capitalization requirements in the RFP, the Ports will be able to assure that companies providing drayage services will have the ability to maintain their own equipment.
- (3) Through a direct contractual relationship, the Ports can ensure greater stability not only of operations in general, but also of the new, cleaner fleet of vehicles. The Plan is currently vague on the topic of how it will ensure that new or retrofitted vehicles, once purchased, will stay in operation at the Ports. Merely providing substantial public subsidies for new or retrofitted vehicles to impoverished drivers risks creating a secondary market in which the new or retrofitted trucks are resold at a discount to large carriers, leaving the driver with badly needed cash, but the clean truck operating in a non-Port trucking market. A contractual agreement with trucking companies will provide the necessary assurances.
- (4) A direct contractual relationship will help reduce pollution. By rationalizing the marketplace and ensuring that all motor carriers compete on a level playing field, the use of such agreements would mean that carriers would compete on the basis of service and reliability, rather than by undercutting safety and environmental standards. This, in turn, would motivate carriers to maximize efficiency by reducing the number of hours that trucks spend idling, waiting in line to pick up or drop off a container. The reduction in idling time alone would significantly reduce pollution in the communities surrounding the Ports.

- (5) The revenues generated by the contract will provide additional funding for all of the costs associated with the Plan. The nearly \$1.8 billion proposed for HDV-related controls represents only the costs of replacing or retrofitting the trucks. As the Plan explains, “[b]eyond the cost of truck or retrofit incentives, additional funding will be needed for administrative costs associated with operating the program, public outreach, tracking, monitoring, and reporting.”<sup>14</sup>
- (6) Mandating employee status would also assist in the reduction of emissions because under this model, owner-operators would make more money and be better able to maintain their vehicles. This is because the driver would receive wages for his or her labor and a separate payment for the rental of his or her vehicle. The driver would no longer have to choose between paying the rent and buying new tires, because the cost of the tires would be taken care of in the equipment rental payment.
- (7) Employee status would also clarify who is responsible and accountable for the drivers. As it stands now, no one takes responsibility for ensuring that drivers have proper credentials, etc. A recent report by the Department of Homeland Security found that the current system allows for massive gaps in security.<sup>15</sup> Under the proposed model, the drayage employer would take responsibility for seeing to it that employee owner-operators perform the necessary maintenance on their vehicles. Additional benefits would likewise accrue concerning the ability to ensure safety training and other security measures.
- (8) Employee status also impacts the implementation of the Plan. The Plan refers to an expectation concerning trucking industry “buy into” the Plan. Given the state of the market, however, it will be impossible to obtain “buy in” from a constantly changing set of independent contractors. Indeed, even the identification of individual trucks — a required first step in order to be sure that the oldest frequently calling trucks get replaced first — will be difficult under the current system.
- (9) Employee status also allows drayage companies to effectively coordinate maintenance operations, one of the “significant hurdles” identified by the Ports in implementing any model.<sup>16</sup>

One example of how such a model could be implemented would involve using available public funds to create low-interest loans, or combinations of loans and grants. These would be accessible to qualified carriers for the purposes of the upgrade or retrofit of vehicles and equipment to be used at the Ports (once the respective carriers have been selected through an RFP process and have executed a contractual agreement with the Ports).

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<sup>14</sup> San Pedro Bay Ports Clean Air Action Plan Technical Report, 58.

<sup>15</sup> See, for instance, “Criminal Records, Bogus Licenses Among Truckers at Key U.S. Port,” *ABC News*, 3/7/06. See also the recent investigative report “Piercing Port Security as Easy as Hitching a Ride,” *Seattle Times*, 7/25/06.

<sup>16</sup> See San Pedro Bay Ports Clean Air Action Plan Technical Report, 54.

The creation of a direct contractual relationship between the Ports and motor carriers will not alter the manner in which motor carriers interact with their customers. Motor carriers will still contract with shippers, brokers and shipping lines to move containers. The creation of a direct contractual relationship between the Ports and motor carriers simply means that the motor carriers providing drayage services will meet the conditions outlined in the RFP. In other words, those carriers will provide drayage services in a secure, environmentally-friendly fashion.

It will be important that any model keep the current driver workforce; indeed, that is one of the strengths of this model. Current drayage drivers and companies understand Port operations, practices, protocols and tariffs, and are familiar with the surrounding areas. The dearth of qualified truck drivers nationally would make any loss of the current workforce a difficult challenge, therefore every effort must be made to retain current drivers and responsible motor carriers as the business model shifts. We think it is imperative that the RFP contain provisions requiring motor carriers who successfully bid on the right to provide drayage services to give employment preference to the current drivers. A loan program, available to current market participants, will ensure that they can continue to service the Ports. Another strength of the loan program is that it can be available not only to large companies who will own their own fleets, but also to employee owner-operators. Any manner of qualified drayage company should have access to these loans, whether a traditional fleet-owning employer or some sort of industry association.

For changes in the Port drayage system to be sustainable in the intermediate- and long-term, all market competitors must include the fully allocated cost of providing transportation — including environmental compliance costs — in the transportation rate structure. These standards should be included in the RFP and bind all trucking companies who are awarded the right to provide drayage services within the Ports.

We also believe that more attention should be paid to the various funding sources for this vast outlay of capital. We believe that the public does have a role in financing pollution controls for this vital economic engine. It is not reasonable, however, that taxpayers shoulder the lion's share of the costs. All stakeholders who benefit from the Ports, and who will benefit from the future growth made possible by these proposed pollution controls, must share in the costs. Indeed, one of the strengths of our proposed model is that it would generate a revenue stream that the Ports could use to defray the expenses associated with the abatement and control of Port-generated pollution. Aside from the taxpayers and trucking industry, shippers and ocean carriers should bear their fair share of the costs as well. There are many ways to design a method of cost-sharing, including, for example, a small per-container fee required of shippers.

Thus far, our comments have focused only on those measures relating to HDVs, specifically addressing Plan shortcomings in achieving the stated goals and implementing the mitigation measures. Our knowledge of the industry allows us to make detailed comments concerning this sector. We would also like to issue a few brief comments on other aspects of the Plan.

First, we applaud the Ports' focus on achievable implementation strategies as a basis for taking action. However, the Ports too often create a false dichotomy between the CAAP and the Ports' depiction of the No Net Increase plan, faulting the latter for providing goals without a clear

methodology. We believe that the two are not mutually exclusive: a comprehensive plan should have clear and ambitious goals as well as a clear methodology. In that light, the CAAP could benefit from a statement of goals, which would complement the thorough treatment given to methodology. We would support a very strong set of goals. In fact, we believe that the results projected by the CAAP should provide the absolute minimum in terms of goals.

Second, we believe that a more ambitious plan would benefit from a longer timeline. We agree with the notion of the Plan as a living document with a rolling timeline. As with a statement of goals, however, the Plan should communicate a vision for what the Ports will look like not only five years in the future, but longer. For instance, while it seems reasonable to focus on the 16,800 most frequently calling trucks in the first five years of the Plan, it should also be a long-range goal of the Plan to eventually address every truck that visits the Ports.

## CONCLUSION

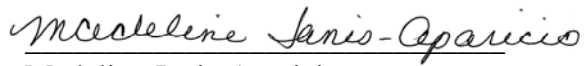
The Los Angeles Alliance for a New Economy and our coalition partners appreciate this opportunity to comment on this critical issue. By working with all stakeholders — workers, industry and business leaders, community and environmental groups, elected and regulatory officials — we hope to continue to play a role in this process. We also hope to continue to work with Commissioners and staffs at both Ports to better develop our model. We are available to discuss any of our concerns or proposals in more depth and to answer any questions regarding these comments.

Sincerely,

Los Angeles Alliance for a New Economy  
Change to Win  
Clergy and Laity United for Economic Justice  
Coalition for Clean Air  
Coalition for Humane Immigrant Rights of Los Angeles  
Communities for a Better Environment  
Harbor Watts Economic Development Corporation  
International Brotherhood of Teamsters  
Los Angeles County Federation of Labor  
Natural Resources Defense Council

*See signatures on following page.*

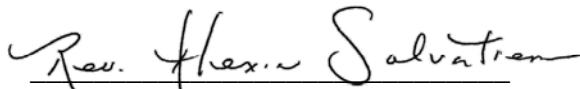
cc: Ralph Appy, Port of Los Angeles  
Robert Kanter, Port of Long Beach  
Bill Jones, EPA Region IX  
Mike Scheible, California Air Resources Board  
Peter Greenwald, South Coast Air Quality Management District



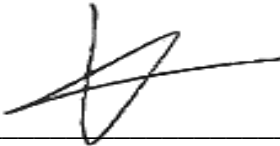
Madeline Janis-Aparicio  
Executive Director  
Los Angeles Alliance for a New Economy



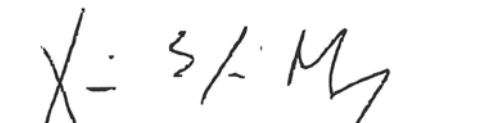
Greg Tarpinian  
Executive Director  
Change to Win



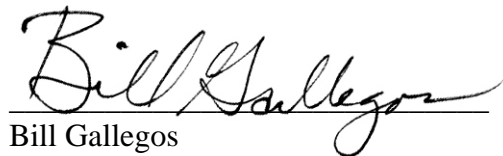
Rev. Alexia Salvatierra  
Executive Director  
Clergy and Laity United for Economic  
Justice



Rafael Pizarro  
Senior Campaign Associate  
Coalition for Clean Air



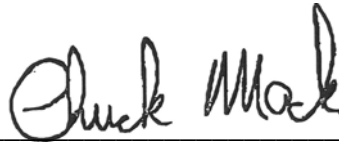
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