

April 22, 2010

The Honorable James L. Oberstar, Chairman
Transportation and Infrastructure Committee
United States House of Representatives
2365 Rayburn House Office Building
Washington, D.C. 20515

The Honorable John Mica, Ranking Member
Transportation and Infrastructure Committee
2313 Rayburn House Office Building
Washington, D.C. 20515

Subject: Support Clean Ports Legislation in 2010

Dear Chairman Oberstar and Ranking Member Mica:

On behalf of the 113 undersigned national, state and local organizations with a combined membership of over 12 million Americans representing diverse interests including community, consumers, environmental, employment, environmental justice, business, labor unions, public health, and transportation and equitable development advocates, we encourage you to support legislation that empowers our nation's seaports to enact highroad clean truck programs. We believe updating the Federal Motor Carrier Act will provide ports with the tools they need to reduce deadly diesel pollution and public road hazards caused by the port trucking industry.

We support the Port of Los Angeles' Clean Truck Program and consider it a national model for how to effectively clean up dirty diesel trucks while creating good jobs and a safer, more economically prosperous and efficient system. Regretfully, the American Trucking Associations (ATA) is attempting to stifle such local innovation by suing the Port based on federal preemption. A year ago, the ATA succeeded in getting a U.S. District Court to issue an injunction of key elements of the program.

While amendments to the Federal Aviation Administration Authorization Act of 1994 were intended to prevent local jurisdictions from creating a “patchwork” of regulations for our national freight transportation system, the reality is that the LA program lays out very specific expectations that businesses must meet to operate at the Port: ranging from having a truck that meets U.S. Environmental Protection Agency air quality standards to ensuring that a driver is properly employed and not misclassified. In fact, the trucking industry had very little difficulty adapting to the new program as evidenced by over 800 trucking companies of all sizes electing to participate, many of which complied with LA’s rules – including employing their drivers – prior to the court injunction. Finally, cargo has not been diverted, shown by the Port of Los Angeles maintaining its market share of containerized cargo throughout their program’s tenure.

Port trucking is not just a problem for Los Angeles; it is a major component of America’s port pollution problem. Our nation’s ports are often served by deteriorating, toxic-spewing rigs, earning a reputation as the place where “old trucks go to die.” In fact, an estimated 95 percent of our nation’s 100,000 heavy-duty trucks hauling critical imports and exports at every major container port fail to meet current U.S. EPA emission standards. Consequently, dirty diesel port trucks are one of the reasons the U.S. EPA estimates that some 87 million Americans reside in port areas that are not meeting basic federal public health standards for ground-level ozone and particulate pollution; and that 40 of the largest 100 U.S. ports are located in metropolitan areas that fail to meet federal air-quality standards. Most residents of these freight transportation corridors are disproportionately low income, recent immigrants, and people of color who lack access to quality jobs but instead have significantly increased cancer risk, cardiac disease, and hospitalization from respiratory disease, including asthma.

The reason for this deadly pollution is clear: the port trucking market has devolved into a system in which underpaid contract drivers assume nearly the full cost and liability for trucking operations while reaping none of the economic benefits. The LA Clean Truck Program seeks to eliminate these perverse incentives that created the environmental problems in the first place by institutionalizing an asset-based trucking system incentivized to maintain expensive vehicles, continuously replace aging fleets, and create middle-class jobs. While the governing bodies of several other U.S. ports, including those of Long Beach, Seattle, New York/New Jersey and Oakland, have taken steps to remove the oldest and most dangerous trucks from port

service, none of them have yet pursued fundamental reform similar to Los Angeles, in part, because they fear legal retaliation by the ATA.

Many of us worked closely with the Port of Los Angeles on its program, and its early success speaks for itself. Since its inception, the program has succeeded in putting more than 6,000 clean diesel and alternative energy trucks on the road that carry over 75 percent of the cargo from the port, according to the Port's analysis. This has allowed the Port to meet its 2012 goal of 80 percent emissions reductions from drayage operations two years ahead of schedule to bring enormous public health and economic benefits to the surrounding region. But this environmental progress is in imminent danger – and these remarkable emissions-reductions achievements will soon stall or reverse – because the ATA's attack has pinned the responsibility for truck operation and maintenance on contract drivers who independent studies prove earn \$10-11/hour and cannot afford to lease or take the trucks to certified mechanics to keep the engines clean.

In defending their attacks, the ATA makes a number of erroneous claims, not the least of which is that they really support the environmental goals of Los Angeles' Clean Truck Program. This is simply not credible, since the ATA has repeatedly worked against the federal truck emissions standard proposed (and ultimately promulgated) by the U.S. EPA over the past twenty years. Here is the ATA's true environmental record:

- The ATA helped lead the opposition to U.S. EPA's 1997 proposed rules on particulate air pollution, the agency's first effort to regulate fine particles, which have been shown to cause premature deaths. Then-President Thomas Donahue said the rules "will...potentially disrupt the movement of goods and supplies around the nation." ATA was the lead plaintiff in the case that sought to invalidate U.S. EPA's rules, but the U.S. Supreme Court upheld the regulation.
- In 2000, the ATA claimed that proposed new standards for diesel vehicles emissions would unfairly raise the cost of trucks over other diesel equipment.
- In 2004, the ATA opposed new emissions standards for 2004 model year heavy-duty diesel engines, claiming that "the dramatic cost increases associated with the 2004 rule could potentially wreak havoc on the trucking industry, which is dominated by small businesses that are ill-

equipped to absorb such enormous increases in operational costs.”¹ Time has shown these concerns to be unwarranted. In 2009, 455,373 out of a total 487,649 licensed motor carriers in our country are very small businesses which own six or fewer tractors.

- In March 2009, the ATA filed a petition seeking to overturn U.S. EPA’s grant of authority to the California Air Resources Board (CARB) to enforce regulations aimed at reducing air pollution from the states 40,000 transport refrigeration units (TRU). These are cooling systems powered by diesel engines and are designed to refrigerate perishable products that are transported by e.g., semi-trailers, truck vans, shipping containers, and rail cars. CARB’s rule is expected to prevent over 200 premature deaths in California by 2020. The U.S. Court of Appeals for the D.C. Circuit is currently considering the ATA’s petition.
- In April 2009, a large ATA state affiliate filed a petition with CARB arguing, in part, that CARB lacks authority to adopt the TRU rule in light of FAAAAA preemption, and requesting that CARB repeal its regulations to reduce PM from the diesel engines by 92 percent in 2020. CARB denied the California Trucking Association’s petition in May 2009.
- In February 2010, the ATA teamed up with the oil industry to legally challenge as “unconstitutional” California’s landmark climate-change legislation to meet a low-carbon fuel standard. CARB adopted the standard the year prior as an important element of the state’s attempt to fight global warming. AB 32 will save billions of dollars by reducing oil consumption and encouraging new biofuels and electric-vehicle technologies.
- In March 2010, ATA’s state affiliate, the New Jersey Motor Truck Association’s Bi-State Harbor Carriers Conference, publicly threatened to sue over a simple ban on pre-1994 dirty trucks from the ports of New York and New Jersey. Citing federal preemption, Tom Adamski, the chairman of the association, stated they were going “to take appropriate action to deal with this. If that means an injunction, we will pursue that.”

With this record, it should come as no surprise that the ATA sued to dismantle the LA Clean Truck Program while claiming it supports the

¹ Vise, Avery, “ATA seeks new rule on emissions”, Commercial Carrier Journal, July 1, 2002.

programs' clean-air goals. In fact, it is the company vehicle requirements – the heart of the program known as concession agreements – which are necessary so trucking companies cannot pass on the cost of environmental compliance to the most vulnerable actors in the port economy: our nation's 100,000 port drivers who provide a vital service to America's economy but are unable to enter the middle class. In fact, the court injunction has emboldened unscrupulous employers to develop abusive and exploitative truck lease arrangements that are driving thousands of Southern California port drivers further into poverty. News accounts profile some drivers are receiving weekly paychecks for as little as \$130 because of these lease payments.

Without the concession model, the Port of Los Angeles' efforts are rendered fiscally irresponsible and environmentally unsustainable. Low-wage drivers are already reporting skimping on routine maintenance that threatens the clean technology, because a new study, "From Clean to Clunkers,"² shows that it costs \$8,500 each year to properly maintain a new clean truck, over 70 percent more than it costs to maintain a dirty one. While these workers long struggled to maintain aging diesel engines, the ATA extols the virtues of these fictitious "small businesses" referred to as "independent owner operators" even though the majority of drivers no longer even own the vehicles. The concession program was established for the first time as a credible enforcement mechanism to ensure compliance with environmental standards for port trucks. Without enforcement, the truck ban is worthless, but with concessions, the Port can:

- **Ensure trucks are adequately maintained:** Reliance on federal enforcement is not enough; only 2 percent of motor carriers are subject to federal safety compliance reviews each year and inspections of fly-by-night port trucking firms are even lower.
- **Eliminate bad actors:** As you know, a recent U.S. Government Accountability Office study found that dozens of long haul trucking companies that have been caught in severe violation of federal regulations either simply continued to operate, or reopened new businesses with no consequences. We suspect a GAO study focused on port drayage firms would uncover similar if not worse violations. The

² The report was released on April 15, 2010 and authored by Blue Green Alliance, International Brotherhood of Teamsters, LAANE, and Sierra Club.

concession program allows the port to terminate agreements with non-compliant companies and prevent them from re-entering the market.

- **Prevent fraud:** The port will be unable to adequately inspect and verify that truck engines comply with vehicle emissions standards without the concession program.

For nearly a century, the ports steadfastly refused to take responsibility for cleaning up the drayage industry. As a result, port expansion projects that rely heavily on port trucking were stalled by mounting concerns that such projects did not meet environmental laws. In fact, the LA Clean Truck Program is the culmination of over a decade of conflict between the communities and the Southern California ports, a standoff that brought infrastructure development to a halt for seven years in the midst of the greatest trade boom in our nation's history. Similar conflict is playing out around the nation's ports. Our communities have paid a high price for local officials' reluctance to act. Now that ports are taking responsibility for the impacts of port operations, they need clear authority to do so.

We can have both high trade volume and clean, safe communities, but only if ports are able to implement programs that give them the tools to address and solve the pollution problem in the ports, including enforcing compliance by bad actors. Please support legislation updating and reforming the Federal Motor Carrier Act to bring it into the 21st Century and remove the uncertainty local port officials face as they try to meet their legal and moral obligations to protect public health and safety.

Sincerely yours,

Alameda Labor Council, AFL-CIO
American Stevedoring, Inc.
Apollo Alliance
Asian Communities for Reproductive Justice
Asian Pacific Environmental Network
Assoc. of New Jersey Environmental Commissions
Atlanta 9 to 5
Banning High School Ecology Club

Banning High School Parent Center
Blue Green Alliance
Broad Avenue Elementary School Parent Center
California School Employees Association
Change to Win
Church Council of Greater Seattle
Center for a Changing Workforce
Center for Environmental Health
Center for Policy Initiatives
Central American Research & Policy Institute, CSU Northridge
Central American Resource Center
Clean Air Task Force
Clean Water Action
Clergy and Laity United for Economic Justice
Coalition for a Safe Environment
Coalition for Clean Air
Coalition for Human Immigrant Rights of L.A.
Committee of St. Peters College, Jersey City, NJ
Communities for a Better Environment
Communities for Clean Ports
Community Coalition for Environmental Justice
Community Partners Council
Connecticut Center for a New Economy
Consumer Federation of California
Denver 9 to 5
East Bay Alliance for a Sustainable Economy
East Bay Community Law Center
East Yard Communities for Environmental Justice
Environment America
Environment New Jersey
Environmental Science Policy Club, CSU Long Beach
For a Better Bronx
Friends of the Earth
FRESC: Good Jobs-Strong Communities
Garden State Alliance for a New Economy
Georgia Strategic Alliance for New Directions and United Policies
(STAND-UP)
Good Jobs and Livable Neighborhoods
GreenFaith
Green for All

Gulf Avenue Elementary School Parent Center
Healthy 880 Corridor
Interfaith Worker Justice
International Brotherhood of Teamsters
Ironbound Community Corporation
King County Democrats Central Committee
Long Beach Alliance for Children with Asthma
Long Island Federation of Labor, AFL-CIO
Los Angeles Alliance for a New Economy (LAANE)
Los Angeles County Federation of Labor
LELO: A Legacy of Equality, Leadership & Organizing
Mahar House
Metropolitan & Policy Studies Network, CSU Long Beach
Move LA
National Alliance of Latin American & Caribbean Communities
National Employment Law Project
National Korean American Service & Education Consortium
Natural Resources Defense Council
New Economy Working Solution (NEWS)
New Jersey Environmental Justice Alliance
New Jersey Environmental Federation
New Jersey Work Environment Council
New York & New Jersey Baykeeper
New York Jobs with Justice
NYU Law Students for Economic Justice
North Shore Waterfront Conservancy
The Workforce Collaborative
One America
Orange County Communities Organized for Responsible Development
(OCCORD)
The Pacific Institute
Partnership for Working Families
Physicians for Social Responsibility
Pittsburgh UNITED
Puget Sound Sage
Safe Climate Campaign
San Pedro Democratic Club
Service Employees International Union
Sierra Club
Sierra Club Angeles Chapter, Harbor Vision Taskforce

Sierra Club – NJ Chapter
Sierra Club, Northern Alameda County Group
Southern California Human Rights Network
Steel Workers of America
Strategic Actions for a Just Economy
Students United for Justice, CSU Long Beach
Teamsters Joint Council 16
Teamsters Joint Council 28
Teamsters Local Union 70
Teamsters Local Union 469
Transportation for America
The Rose Foundation
Torrance Democratic Club
UNITE HERE
UNITE HERE Local 8
UNITE HERE Local 11
United Farm Workers of America
United Food & Commercial Workers Union
Urban Agenda
Urban & Environmental Policy Institute, Occidental College
Utility Workers Union of America
Vote Health
West Oakland Environmental Indicators Project
Wilmington Middle School Parent Center
Wilmington Park Elementary Parent Center
Working Partnership USA
WorkSafe

cc: Honorable Nancy Pelosi, U.S. House of Representatives
Honorable John Boehner, U.S. House of Representatives
Committee on Transportation and Infrastructure, U.S. House of
Representatives
Lisa P. Jackson, Administrator, U.S. Environmental Protection
Agency
Ray LaHood, Secretary of Transportation
Hilda Solis, Secretary of Labor