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August 21, 2009

The Honorable James L. Oberstar
United States House of Representatives
2365 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Oberstar:

Thank you for meeting with the Natural Resources Defense Council (NRDC) and Sierra Club and other coalition partners on July 29, 2009. On behalf of our 2.5 million members and supporters, we greatly appreciated the opportunity to discuss with you our proposed legislation aimed at protecting the Clean Trucks Program (CTP) at the Ports of Los Angeles and Long Beach, and urge you to support an amendment to the Federal Aviation Administration Authorization Act to protect this critical public health program.

Before the CTP, diesel trucks that serviced the ports were some of the oldest and most polluting trucks on the road, and were the largest source of on-shore diesel particulate matter (PM) in California. Diesel PM is associated with premature mortality, increased cancer risk and other serious health ailments. Children and the elderly are particularly susceptible to these health risks. In fact, prior to the ports' adoption of the CTP, the port trucking system imposed up to \$1.7 billion of costs on the public every year in the form of operational inefficiencies, community impacts and, above all, impacts on public health. However, over the course of less than one year, the CTP has significantly reduced air pollution at the ports and in communities all along freight transportation corridors—so much so that the ports' goal of reducing truck emissions by 80% in five years will likely be achieved by the second year of the program. This is the *only* program at the ports that has effectively reduced air pollution from port trucking, and the concession model is an integral component of the solution.

During our meeting, you raised a number of important questions related to the necessity of the concession agreement component of the CTP, including whether the ports' environmental goals could be achieved without the use of a concession model. As environmental organizations that have spent nearly a decade working to reduce air pollution from port operations, we firmly believe that a concession model is essential to the long-term success of the CTP. Indeed, the interconnectedness of the truck ban and the concession agreements, as well as the nature of drayage market prior to implementation of the CTP, illustrates that the concession model secures and advances the clean air benefits of the program.

First, by creating a direct contractual relationship between the ports and trucking companies, the concession agreements allow the ports to hold an identifiable, financially-responsible entity accountable for compliance with the CTP. Without a concession model, the ports have no way to directly enforce the truck ban on license motor carriers (LMCs) by, for example, requiring LMCs to accurately report information related to the emissions standards of their trucks or audit such information, or precluding LMCs who repeatedly violate the truck ban from using port facilities. A concession agreement, however, enables the ports to:

- Inspect truck engines to confirm the engine years match what is permitted under the truck ban.
- Notice a default in the event a LMC provides fraudulent information to the ports related to the truck's engine year.
- Notice a default in the event a LMC fraudulently uses another truck's identification tag to gain entry on to port property.
- Notice a default in the event a LMC disables the emissions control features of a truck.

Without a concession agreement, the ports will have to rely solely on marine terminal operators (MTOs), who operate the port terminal gates, to turn away trucks that do not meet the truck ban. However, enforcement of the truck ban through MTOs is inefficient and ineffective. It is impractical to require MTOs to conduct truck inspections for engine compliance because much of this work is conducted at the LMC's work site, and because such inspections cannot be performed at the terminal gates without disrupting the flow of cargo. Moreover, the ports' remedies against a MTO that permits entry of a non-compliant truck onto port property are unsatisfactory and ineffective to change the behavior of the LMC (terminating a lease of a tenant-MTO that generates multi-millions in shipping revenues for the ports will harm the ports and have no effect on the wayward LMC that violates the truck ban or other environmental requirements).

While, to date, the CTP has largely been a success, recent data released from the ports indicates that non-compliant trucks have gained entry onto port facilities, indicating a need for more robust enforcement. Further, trucking industry representatives have indicated to NRDC that CTP-compliant trucks are picking up cargo from the ports and then driving to unknown locations where the cargo is transferred to an older, non-CTP compliant truck that cannot access the ports. The compliant truck then returns back to the ports for additional cargo and repeats this fraudulent process. Without a concession agreement, the ports cannot directly punish that conduct. However, as discussed above, the concession agreement creates, for the first time, a contractual relationship between the ports and LMCs. Within this agreement, the ports can require LMCs, as a condition of port entry, to comply with the truck ban and preclude LMCs that violate the ban or engage in fraudulent conduct from performing port drayage services. Without this agreement, the ports have no way to directly punish LMCs who violate that ban.

Second, the concession agreements place vehicle maintenance requirements on trucking companies, rather than on underpaid drivers, to ensure that trucks operate as cleanly and efficiently as possible. Historically, port drayage has been performed by underpaid drivers who are paid by the “load” (for every cargo move). Under this model, drivers could not afford to properly maintain their trucks, let alone purchase newer, cleaner trucks. In fact, the Los Angeles Times has reported on the financial struggles of underpaid port truck drivers and how the prior drayage market created disincentives for drivers to properly maintain their trucks.¹ While federal and state safety and maintenance laws exist, their enforcement is extremely limited: In 2006, less than 2% of registered motor carriers were subject to federal compliance reviews.

One of the stated purposes of the CTP was to restructure the port drayage industry so that only asset-based trucking companies performed port trucking services. The concession agreements promote this restructuring by adopting requirements that only financially-sound companies can meet. Under the concession model, port drayage services are conducted by companies that can properly maintain their trucks and meet gradually more health-protective emissions standards through the purchase of retrofit devices or newer and cleaner trucks. Absent the concession model, the cost of truck maintenance will once again fall on underpaid drivers and the public will be repeatedly asked to bear the cost of subsidizing the purchase of new trucks. The concession model, however, ensures that the environmental benefits of the CTP are sustainable well into the future.

Third, the concession agreements require trucking companies doing business at the ports to be more efficient, thereby reducing air pollution generated by port traffic and congestion. Prior to the ports’ implementation of the CTP, the port drayage system was rife with inefficiencies that hampered the ports’ abilities to efficiently move cargo. Drivers’ backgrounds were unknown, as were the routes they followed. It was not even known how many drivers serviced the ports, or how many brokers coordinated them. Further, the drayage system lacked coordination between inbound and outbound deliveries by independent truckers who dominated port traffic. As a result, matching of trucks providing inbound loads with loads that needed to be taken away from the ports did not occur at a high rate, creating a situation where more polluting truck trips were needed to sustain port trucking operations. The more trucks that visit the ports, the greater the congestion on local roads, and the longer wait times become at the gate and within port terminals. Under the employee provisions of Los Angeles’ concession, however, trucking companies can coordinate the pick-ups and drop-offs of their employee drivers—thereby reducing the number of “empty” moves and air pollution associated with unnecessary truck trips.

Accordingly, we strongly disagree with the July 27, 2009 letter authored by a number of industry groups (“Industry Letter”), including a number of retail associations, that was recently sent to you. The letter asserted that our proposed legislation would undermine competition and is

¹ <http://articles.latimes.com/2008/jan/21/local/me-trucks21>

Chairman Oberstar

August 21, 2009

Page 4 of 4

unnecessary to achieve the clean air goals of the ports.² As described above, this program has already proven to be a huge environmental success, and the concession agreements are necessary to secure and protect those successes. Our proposed legislation minimizes disruptions to competition by ensuring that port programs do not limit the number of motor carriers that provide services to ports or set the prices at which motor carriers provide services to a customer. Given that the ports' programs target short-haul trucking (drayage services that primarily haul cargo within close proximity to the ports) the CTP and programs like it are unlikely to create a patchwork of regulations for trucks that carry cargo across state lines.

Further, the Industry Letter is premised on the belief that the prior drayage system worked—that it was efficient, competitive, and equitable. We couldn't disagree more. The former port drayage model is precisely what led to a system of underpaid drivers, older polluting trucks, and inefficient trucking operations.³ This system shifted enormous social and public health costs onto local communities and the state. The concession model changes that.

For these reasons, we urge you to support an amendment to the Federal Aviation Administration Authorization Act that would protect all of the components of the CTP, and open the door for communities across the nation to make their ports cleaner, safer, and more efficient.

Sincerely,



Peter Lehner
Executive Director
Natural Resources Defense Council



Allison Chin
President
Sierra Club

² Statements within the letter that suggest that its signatories support the ports' clean air goals are disingenuous. For example, the National Industrial Transportation League (NITL) opposed the ports' Clean Air Action Plan, and the Retail Industry Leaders Association (RILA) opposed California legislation that would have required ports to limit emissions from ships, locomotives, and trucks. NITL and RILA are signatories to the Industry Letter.

³ In fact, a 2005 paper by the Waterfront Coalition, an organization which includes many of the same industry groups that signed the Industry Letter, acknowledges that harbor trucking is not profitable, and advocates for using public money to modernize and purchase new equipment.