

## **CLEAN AND SUSTAINABLE TRANSPORTATION COALITION**

January 10, 2012

The Honorable Harry Reid  
United States Senate  
Washington, DC 20510

**Re: Oppose the “Clean Ports Act of 2011”**

Dear Majority Leader Reid:

On behalf of undersigned members of the Clean and Sustainable Transportation Coalition, we urge you **to oppose** the “Clean Ports Act of 2011” (S. 2011) introduced by Senators Charles Schumer (D-NY) and Kristen Gillibrand (D-NY). This legislation would make a controversial, unnecessary and counterproductive change to longstanding federal law. If enacted, this bill would unfairly close the drayage market to many hard working small businesses that move much of the nation’s international commerce.

Current law preempts state and local regulation relating to a motor carrier’s rates, routes and services, with an exception for regulation of motor vehicle safety. However, those who support S. 2011 hope to persuade Congress to grant local governments the ability to regulate the port trucking industry, arguing that regulation is needed to address environmental and congestion matters.

The undersigned groups, who represent exporters, importers, and the logistics industries and service providers that support them, disagree. Some coalition members have invested considerable amounts of time and money to speed the switch to cleaner trucks in the Ports of Los Angeles and Long Beach and are doing the same at other U.S. ports who have Clean Truck Programs, including the Port of New York/New Jersey. Industry has already spent more than \$1.2 billion on truck replacement under the Clean Truck Program at the California ports.

We strongly support and have invested in efforts to improve air quality and congestion in and around America’s ports. However, the effort to reverse the preemption of state and local interference in interstate commerce is simply an attempt to overturn losses in the federal courts restricting local regulation of truck drayage services. If successful, this effort would result in a return to a patchwork of regulations governing interstate and foreign commerce, exactly what Congress sought to prevent when it deregulated the air carrier industry in 1978 and upon which the motor carrier preemption was modeled in 1994.

As has been demonstrated at the Ports of Los Angeles and Long Beach, port authorities already have the ability to implement effective truck emissions programs. The current Clean Trucks Program in Southern California – without implementation of

the preempted intrusion into motor carrier operations – has reduced air emissions by 90% a full two years ahead of schedule. Since these plans have been implemented by the Ports, over 11,000 trucks have been replaced to meet or exceed 2007 U.S. EPA emissions rules. On January 1, 2012, the final phase of the program took effect. All trucks that do not meet or exceed the 2007 rules are now banned from servicing the ports. As the Port of Long Beach announced just a few days ago, come the New Year it will have banned “permanently the last remaining older, more polluting trucks from Port terminals.”

The truck concession programs that would be authorized under S. 2011 are desired to accomplish other non-environmental goals. For example, under the concession plan adopted by the Port of Los Angeles in 2007, only company-employed drivers would have been allowed to serve the Port, to the exclusion of a large number of independent owner-operators. American Trucking Associations (ATA) filed suit against the Port of Los Angeles under the legal argument that the truck concession portion of the Clean Trucks Program is preempted by federal law regulating rates, routes and services. The 9<sup>th</sup> Circuit Court of Appeals agreed, ruling that the employee mandate portion of the Port of Los Angeles’ Clean Truck Program is preempted under federal law.

The accomplishments of the Port of Long Beach, which collaborated with Los Angeles in many aspects of the Clean Truck Program, underscore the weakness in the case being advocated by proponents of S. 2011. Not only have both ports been enormously successful in their program without truck concession agreements in place, but Long Beach decided there was actually no need for overly restrictive concession agreements or a change in law (which it opposes). Instead, the port reached an agreement with the trucking industry establishing a motor carrier and driver registration system covering port drayage services for Long Beach.

Other ports around the country, including Seattle, Charleston, Virginia, New York/New Jersey and Oakland, are all implementing similar clean truck programs to reduce harbor truck emissions without the controversial truck concession program. The American Association of Port Authorities (AAPA) has passed a policy position that states that the AAPA does not believe there is a need at this time to amend federal law because of the success of clean truck programs that have been implemented without a change in the law.

Overtaking a longstanding Congressional determination which would allow state and local regulation of motor carrier rates, routes, and services creates an inconsistent patchwork that stifles interstate commerce for the sake of enlarging the pool of drivers that may be organized is, in our view, dangerously short-sighted. Clean Truck Plans that have been enacted under current law have reaped tremendous reductions in emissions. If enacted into law, this bill would void the enormous investments made by many small businesses and put them out of work.

Changes to current law regarding harbor drayage trucking are simply not needed to promote clean air. Changes to current law regarding harbor drayage trucking are simply not needed to promote clean air. We urge you to oppose these efforts.

Sincerely,

Agriculture Transportation Coalition (AgTC)  
American Apparel & Footwear Association (AAFA)  
American Association of Exporters and Importers (AAEI)  
American Import Shippers Association  
American Trucking Associations  
California Trucking Association  
California Retail Association  
Columbus River Customs Brokers & Forwarders Assn.  
Customs Brokers & Forwarders Assn. of Northern California  
Customs Brokers & International Freight Forwarders Assn. of Washington State  
Express Association of America  
Express Delivery and Logistics Association  
Fashion Accessories Shippers Association (FASA)  
Harbor Truckers Association  
Intermodal Association of North America (IANA)  
International Warehouse Logistics Association  
Los Angeles Customs Brokers & Freight Forwarders Assn  
NASSTRAC, Inc.  
National Association of Waterfront Employers  
National Customs Brokers and Forwarders Association of America  
National Home Furnishings Association  
National Industrial Transportation League  
National Retail Federation  
New Jersey Business & Industry Association  
New Jersey Motor Truck Association  
New Jersey Retail Merchants Association  
New York Shipping Association  
NYS Motor Truck Association  
Pacific Merchant Shipping Association  
Pacific Coast Council of Customs Brokers & Freight Forwarders Assns. Inc  
Pacific Northwest Asia Shippers Association PNASA  
Retail Industry Leaders Association  
San Diego Customs Brokers Assn.  
The Health & Personal Care Logistics Conference, Inc.  
The Waterfront Coalition  
Travel Goods Association (TGA)  
U.S. Association of Importers of Textiles and Apparel  
U.S. Chamber of Commerce  
Washington Retail Association  
World Shipping Council

