

February 4, 2010

The Honorable Mike McGinn
Mayor of Seattle
Seattle City Hall 7th floor
600 Fourth Avenue
Seattle, WA 98124-4749

RE: Opposition to Amendments to the Federal Aviation Administration Authorization Act

Dear Mayor McGinn:

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 letter of January 22nd to Representative Jay Inslee (D-WA) stating your support for an amendment to the Federal Aviation Administration Authorization Act (FAAAA) that would change longstanding federal law and adversely impact harbor trucking.

We fully support efforts by the ports, including those of the Port of Seattle, to improve air quality (*see attached letter*). However, there is absolutely no need for a change to longstanding federal law to achieve this objective, nor any basis for using this goal as a justification for banning independent owner-operator trucking firms from serving our nation's ports. We are also disappointed that you have taken such a position without consulting with the Port of Seattle's customers, and without considering the fact that such a change would, in the end, handicap the ability of the Port of Seattle to compete for shippers' business.

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. We have seen great success at the Ports of Los Angeles and Long Beach who have achieved an estimated 80 percent reduction in diesel emissions under their current program, two years ahead of schedule. This result has been achieved without any change in federal law. In fact, the American Association of Port Authorities (AAPA) recently passed a policy position that states that the AAPA does not believe there is a need at this time to amend the Federal Aviation Administration Authorization

Act because of the success of current clean truck programs that have been implemented without a change in the law.

The argument that port trucking services should not be subject to federal preemption in order to improve air quality is fallacious, and is based on motives unrelated to achieving cleaner air around the ports.

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 certain 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 under the legal argument 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 since settled the lawsuit with the ATA. According to Port of Long Beach Executive Director Richard Steinke: "[t]he 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. We have

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.

already seen great success in Southern California as stated earlier and expect similar results with the Port of Seattle's Clean Trucks Program. A change 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 advance the Teamsters real objective of putting law-abiding independent owner operators out of business.

Sincerely,

Agriculture Transportation Coalition
American Apparel and Footwear Association
American Import Shippers Assoc. Inc.
American Trucking Associations
Clean Truck Coalition
Coalition of New England Companies for Trade
Customs Brokers and Freight Forwarders Assn of Washington State
Fashion Accessories Shippers Association
Footwear Distributors and Retailers Association
Harbor Truckers for Sustainable Future LA/LB Port
International Warehouse Logistics Association
NASSTRAC, Inc.
National Industrial Transportation League
National Retail Federation
Pacific Coast Council of Customs Brokers & Freight Forwarders Assns.
Pacific Northwest Asia Shippers Association
Retail Industry Leaders Association
The Health & Personal Care Logistics Conference, Inc.
The Waterfront Coalition
Travel Goods Association
U.S. Association of Importers of Textiles and Apparel
United States Council for International Business
West State Alliance, Oakland
World Shipping Council

Attachment: August 24, 2009 Coalition Letter to Port of Seattle Commission President
Bill Bryant