

## CLEAN AND SUSTAINABLE TRANSPORTATION COALITION

March 8, 2010

The Honorable James Oberstar  
U.S. House of Representatives  
Washington, D.C. 20510

Re: Opposition to Proposed Amendments to Trucking Exemptions in the Federal Aviation Administration Authorization Act (FAAAA)

Dear Chairman Oberstar:

On behalf of undersigned members of the Clean and Sustainable Transportation Coalition, we urge you **not to sign** on to a letter being circulated by Rep. Jerrold Nadler (D-NY) endorsing a controversial change to longstanding federal trucking rules codified in the Federal Aviation Administration Authorization Act (FAAAA). These changes, if enacted, could unfairly force out of the industry many hard working small businesses responsible for moving much of the nation's international commerce.

A campaign is underway to persuade Congress to grant to local governments the ability to regulate the port trucking industry to address environmental and port security matters. Present law pre-empts state and local regulation of trucking in foreign and interstate commerce, except as it regards safety. We strongly support and have invested in efforts to improve air quality and port security in and around America's ports. However, the effort to undermine the preemption of state and local interference in interstate commerce is an attempt to overturn losses in the federal courts restricting local regulation of truck drayage services. If successful, these efforts will not improve air quality or security at our nation's ports. But it will result in a return to fragmented and patchwork regulations over foreign and interstate commerce, contrary to the U.S. Constitution, acts of Congress, and common sense.

The undersigned members of the Clean and Sustainable Transportation Coalition represent exporters, importers, and the logistics industries and service providers that support them. The members of these state and national associations move a substantial volume of the nation's exports and imports through marine terminals and are dedicated to ensuring that the port trucking industry operates in an environmentally responsible and sustainable manner. Many of the undersigned groups endorsed the goals of the Clean Truck Program enacted by the Ports of Los Angeles and Long Beach to quickly turn over the fleet of aging harbor trucks in America's largest seaport. In fact, some in our group have invested considerable amounts of time and money to speed the switch to cleaner trucks in those ports. Industry only opposes the plan's concession requirements that ultimately have nothing to do with improving air quality or security.

Unfortunately the letter being circulated by Representative Nadler inaccurately states that the ports do not have the ability to enforce the Clean Trucks Program. Both the Ports of Los Angeles and Long Beach have the ability to enforce the plan and are currently preventing the older, dirtier trucks from entering the port facilities. A concession plan is not required to enforce this ban. In fact, since these plans have been implemented by the ports, over 8,000 trucks have been replaced to meet or exceed 2007 U.S. EPA emissions rules. As both ports acknowledge, this Clean Trucks Program has reduced air emissions by 80%, a full two years ahead of schedule. Other ports around the country are implementing similar clean trucks programs to reduce harbor truck emissions without need for a truck concession program.

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

Representative Nadler's letter also misstates the facts about the current lawsuit between the American Trucking Associations and the Port of Los Angeles. 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 mandating that drivers be employees and imposing certain other onerous economic-based regulations. These restrictions, principally advocated by the International Brotherhood of Teamsters and Change to Win, are specifically 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 Beach<sup>1</sup> 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 the U.S. District Court for the Central District of California and was affirmed by the U.S. Court of Appeals for the 9<sup>th</sup> Circuit. Those courts determined that the ports' concession plans regulate interstate trucking "prices, routes, and services" and thus were preempted by the FAAAA.

The draft letter you received congratulates the Port of Los Angeles for the success of its Clean Truck Program and would make it appear that the signers know of no other truck emissions reductions program that "has had such remarkable success in such a short time period." But as we have noted that is hardly true. Moreover the accomplishments of neighboring Port of Long Beach, which collaborated with Los Angeles on the development of the Clean Truck Program, just underscore the weakness in the

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<sup>1</sup> 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.

case being advocated by Los Angeles and others. Not only have both ports been enormously successful in their program without truck concession agreements in place, but Long Beach decided there was no need for concession agreements or a change in law.

The overwhelming success of these programs in major seaports around the country is a testament to the fact that small business can be compatible with clean air initiatives at ports. It is our hope that members Congress will recognize and support the enormous investment in innovative green technologies made by industry stakeholders including the many small businesses that make up the harbor trucking industry in local markets across the country.

It is unfortunate that some environmental groups and other interests are undermining these investments and are seeking radical and unfair changes to the make-up of the port drayage industry ostensibly in the name of clean air. The proposed amendment to the FAAAA is designed to ban independent harbor truckers from moving cargo through seaports to the benefit of larger trucking companies. If enacted into law, the amendment could void these enormous investments made by many small businesses and put them out of work.

Those supporting the amendment claim that the many small businesses that invested in state of the art clean trucks do not have the wherewithal to adequately maintain and operate the equipment. That forcing these independent truckers out of the industry would somehow promote highway safety and port security. However, established federal and other mechanisms are in place in seaports and elsewhere to guarantee that only well maintained equipment operate along roads and highways. Congress also put in place a many layered system to secure ports including the credentialing of truck drivers.

Companies and associations represented by the undersigned have collaborated with ports around the country. We are ready to work with other ports to address emissions and other issues of importance. However, we do not believe that any change to current law regarding trucking as codified in the FAAAA is needed to achieve these ends. Instead, it is a distraction. In fact, such controversial changes could radically and quite unfairly change the industry by forcing many small businesses that have made environmentally responsible investments to close their doors. We urge you to oppose efforts to amend the FAAAA.

Sincerely,

American Apparel and Footwear  
Association  
American Association of Exporters and  
Importers  
American Import Shippers Association  
Clean Truck Coalition, LLC  
Coalition of New England Companies for  
Trade

Columbia River Customs Brokers and  
Forwarders Assn.  
Custom Brokers & Forwarders Assn. of  
Northern California  
Customs Brokers and Freight Forwarders  
Assn of Washington State  
Express Delivery and Logistics  
Association

Fashion Accessories Shippers  
Association  
Footwear Distributors and Retailers of  
America  
Harbor Truckers for Sustainable Future,  
LA/LB  
International Warehouse Logistics  
Association  
Los Angeles Customs Brokers & Freight  
Forwarders Assn.  
NASSTRAC, Inc.  
National Association of Waterfront  
Employers  
National Industrial Transportation League  
National Retail Federation  
New York Shipping Association

Pacific Coast Council of Customs Brokers  
& Freight Forwarders Assns. Inc  
Pacific Merchant Shipping Association  
Retail Industry Leaders Association  
San Diego Customs Brokers Assn.  
The Health & Personal Care Logistics  
Conference, Inc.  
Transportation Intermediaries Association  
The Waterfront Coalition  
Travel Goods Association  
US Association of Importers of Textiles  
and Apparel  
United States Council for International  
Business  
West State Alliance, Oakland  
World Shipping Council