

CLEAN AND SUSTAINABLE TRANSPORTATION COALITION

April 16, 2010

Mr. Christopher O. Ward
Executive Director
The Port Authority of New York and New Jersey
225 Park Avenue South
New York, NY 10003

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

Dear Executive Director Ward:

On behalf of undersigned members of the Clean and Sustainable Transportation Coalition, we would like to congratulate you and the Port Authority of New York and New Jersey for the recent announcement of the Regional Truck Replacement Program. We fully support efforts by U.S. ports to improve air quality at their facilities and believe this program will improve harbor truck related emissions while sustaining and promoting the competitive position of marine terminals.

However, we are concerned by your recent statements about the need to amend the Federal Aviation Administration Authorization Act (FAAAA) in order to achieve these clean air goals. We wonder as to your agency's commitment to conducting an effective emissions reduction program that is consistent with remaining an attractive and competitive port of entry. We strongly believe that U.S. ports, including the Port Authority, have the tools and authority under current law to develop, implement and enforce effective clean truck plans. Thus we strongly oppose efforts to amend the FAAAA.

The Clean and Sustainable Transportation Coalition (CSTC) represents exporters, importers and the logistics industries and service providers that support them. These industries operate hundreds of businesses and employ millions of workers. These industries are critical to the continued growth of the American and the global economy. The members of these national and state associations move a substantial volume of the nation's commerce through U.S. marine terminals and are dedicated to the principle that the port trucking and logistics sectors should operate in an environmentally responsible and sustainable manner. This can be achieved largely through market based solutions accomplished through stakeholder partnerships, as is being demonstrated in the Ports of Los Angeles and Long Beach.

A campaign is underway to persuade Congress to grant local governments the ability to regulate the port trucking industry to address environmental and port security matters. Current 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 U.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 acts of Congress and common sense.

We believe there have been numerous inaccurate statements about the ports' lack of ability to enforce Clean Truck Programs. The Ports of Los Angeles and Long Beach have the ability to enforce these plans and are currently preventing the older, dirtier trucks from entering the port facilities. A "concession" plan, requiring independent contractor truckers who are owner-operators to become employees of larger trucking companies, is not necessary to enforce this ban. In fact, since these plans have been implemented by the ports in Southern California, over 8,000 trucks have been replaced by over 6,300 new trucks which meet or exceed 2007 U.S. EPA emissions rules. As both ports acknowledge, the programs have reduced air emissions by 70%, and expect to reach 80% this year, 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 adopted a policy position stating 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.

There have also been numerous misstatements about the current lawsuit between the American Trucking Associations and the Port of Los Angeles. 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 were specifically designed to eliminate competition from small independent businesses. 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 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 trucking "prices, routes, and services" and thus were preempted by the FAAAA.

The overwhelming success of these Clean Truck 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

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.

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. This is incorrect as witnessed by the success of Clean Truck Programs around the country. In addition, there are established federal and other mechanisms in place in at seaports and elsewhere to guarantee that only well maintained equipment operate along roads and highways. Congress also put in place a multi-layered system of port security, including credentialing truck drivers.

The companies and associations represented by the undersigned are collaborating with ports around the country. Some participated directly or indirectly in the successful development of your port's Clean Air Strategy. They are proud of the broad stakeholder support it achieved and we are confident in the plan's ultimate success. However, we do not believe that any change to current law regarding trucking as codified in the FAAAA is needed to achieve that success or new clean truck programs elsewhere. Instead, it is a distraction and a needless misdirection of resources. In fact, such controversial changes to the law could radically and quite unfairly change the industry by forcing many small businesses that have made environmentally responsible investments to close their doors. It also could put port authorities around this country in an unwelcome and difficult position relative to neighboring communities and local officials.

We hope that you will reconsider your position on this issue and not align your port with a thinly disguised effort to put independent owner operators of clean trucks out of business, an effort that could result in your port becoming less competitive. Instead of spending resources on a divisive legislative contest let us continue to work together in the common objective of improving air quality at one of the nation's greatest ports.

Sincerely,

Agriculture Transportation Coalition
American Apparel and Footwear Association
American Import Shippers Association
American Trucking Associations
California Trucking Association
Clean Truck Coalition, LLC
CONNECT - Coalition of New England Companies for Trade

Fashion Accessories Shippers Association
Harbor Truckers for a Sustainable Future
International Warehouse Logistics Association
NASSTRAC, Inc.
National Association of Waterfront Employers
National Industrial Transportation League
National Retail Federation
New Jersey Council of Chain Drug Stores
New Jersey Retail Merchants Association
New York Shipping Association
Pacific Coast Council of Customs Brokers & Freight Forwarders Assns. Inc
Pacific Merchant Shipping 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
World Shipping Council

CC: Anthony Coscia, Chairman of the Board of Commissioners of the Port Authority
of New York and New Jersey