

CLEAN AND SUSTAINABLE TRANSPORTATION COALITION

July 29, 2010

The Honorable
U.S. House of Representatives
Washington, D.C. 20515

Re: Oppose the “Clean Ports Act of 2010”

Dear Representative:

On behalf of undersigned members of the Clean and Sustainable Transportation Coalition, we urge you **not to cosponsor** the “Clean Ports Act of 2010” being circulated by Rep. Jerrold Nadler (D-NY). This legislation endorses a controversial, unnecessary and counterproductive change to longstanding federal trucking rules codified in the Federal Aviation Administration Authorization Act (FAAAA). If enacted, this bill 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 allegedly 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 motor vehicle 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, this effort 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, including Seattle, New York/New Jersey and Oakland, are all implementing similar clean truck programs to reduce harbor truck emissions without the controversial truck concession program.

In fact, the American Association of Port Authorities (AAPA) earlier this year 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 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 in April 2009 by the U.S. District Court for the Central District of California after the U.S. Court of Appeals for the 9th Circuit unanimously reversed the District court's initial denial of the injunction. A trial on the merits of the case concluded April 28 and a ruling by the U.S. District Court is expected soon. Congressman Nadler's legislation is apparently motivated by the fact that the Teamsters and their supporters believe they will lose the legal battle so they are now asking you to instead change the law so they can win!

The Dear Colleague 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 initially collaborated with Los Angeles on the development of the Clean Truck Program, just underscore the weakness in the 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 actually no need for overly

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.

restrictive concession agreements or a change in law and instead reached an agreement with the trucking industry establishing a motor carrier and driver registration system covering port drayage services for Long Beach.

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 of 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 contained in the "Clean Ports Act of 2010" 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 & Footwear Association
Agriculture Transportation Coalition
American Import Shippers Assoc. Inc.
American Trucking Associations
California Retailers Association
California Trucking Association
Clean Truck Coalition, LLC
CONNECT - Coalition of New England Companies for Trade
Columbia River Customs Brokers and Forwarders Assn.
Custom 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
Footwear Distributors and Retailers of America
Harbor Trucking Association
International Warehouse Logistics Association
Los Angeles Customs Brokers & Freight Forwarders Assn.
NASSTRAC, Inc.
National Association of Waterfront Employers
National Retail Federation
New Jersey Retail Merchants Association
New York State Motor Truck Association
New York Shipping Association
Pacific Coast Council of Customs Brokers & Freight Forwarders Assns. Inc
Retail Industry Leaders Association
San Diego Customs Brokers Assn.
Snack Food Association
The Health & Personal Care Logistics Conference, Inc.
The National Industrial Transportation League
The Waterfront Coalition
Travel Goods Association
U.S. Association of Importers of Textiles and Apparel
Washington Retail Association
West State Alliance
World Shipping Council