



U.S. House of Representatives
Committee on Transportation and Infrastructure

Washington, DC 20515

James L. Oberstar
Chairman

John L. Mica
Ranking Republican Member

David Heymsfeld, Chief of Staff
Ward W. McCarragher, Chief Counsel

James W. Coon II, Republican Chief of Staff

May 3, 2010

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Highways and Transit

FROM: Subcommittee on Highways and Transit Staff

SUBJECT: Hearing on “Assessing the Implementation and Impacts of the Clean Truck Programs at the Port of Los Angeles and the Port of Long Beach”

PURPOSE OF HEARING

The Subcommittee on Highways and Transit is scheduled to meet on Wednesday, May 5, 2010, at 10:00 a.m., in room 2167 of the Rayburn House Office Building to receive testimony on the clean truck programs at the Port of Los Angeles and the Port of Long Beach. The Subcommittee will hear from the Deputy Executive Directors of the Port of Los Angeles and the Port of Long Beach; as well as affected parties at the ports including a licensed motor carrier, an independent drayage driver, and representatives from the American Trucking Associations (ATA), the International Brotherhood of Teamsters (Teamsters), the Natural Resources Defense Council (NRDC), the Owner-Operator Independent Drivers Association (OOIDA), and the Coalition for Responsible Transportation.

BACKGROUND

I. Overview of the San Pedro Bay Ports

The Ports of Los Angeles and Long Beach are adjacent port facilities located on San Pedro Bay in southern California. Together, they constitute the fifth busiest port complex in the world, moving some \$315 billion in total trade, including handling 11.8 million 20-foot containers (twenty-foot equivalent units or TEUs) in 2009. Together, these ports handle over 40 percent of all the containers entering the United States.

In 2007, the Alameda Corridor Transportation Authority released a comprehensive trade impact study that highlighted the role played by the Ports of Los Angeles and Long Beach in the

regional, national, and global economy. This study found that more than 886,000 jobs in California are directly or indirectly related to the international trade activities at the two ports. Furthermore, the report found that trade activities at the ports generated 3.3 million jobs nationwide.¹

The Port of Los Angeles is the busiest container port in the United States and the 13th busiest container port in the world. Its port facilities cover approximately 7,500 acres along 43 miles of waterfront property; these facilities employ approximately 16,000 people. In 2009, the Port of Los Angeles handled 6.7 million TEU containers and a total of 158 million metric tons of cargo valued at \$196 billion. This marked a decline below the port's container traffic in 2008; the highest annual level of container traffic was recorded in 2006 when 8.4 million TEU containers passed through the port. The Port of Los Angeles is a department of the City of Los Angeles; it is managed by an Executive Director and administered by a five-member Board of Harbor Commissioners, appointed by the mayor of Los Angeles, and confirmed by the City Council.

The Port of Long Beach is the second busiest port in the United States and the 17th busiest container port in the world. It encompasses 10 piers located on more than 3,200 acres of land, and supports more than 30,000 jobs in Long Beach. In 2009, the port handled roughly 5.07 million TEU containers and a total of 70 million metric tons of cargo valued at \$120 billion. On average, roughly 13,900 TEUs move through the port each day. The Port of Long Beach is a public agency managed and operated by the City of Long Beach Harbor Department, and governed by a five-member Long Beach Board of Harbor Commissioners, appointed by the mayor of Long Beach and confirmed by the City Council.

II. San Pedro Bay Ports Clean Air Action Plan

The Ports of Los Angeles and Long Beach are located in the South Coast Air Basin air district, as designated by the State of California to monitor air quality pursuant to the requirements of the Clean Air Act (42 U.S.C. § 7401 et seq). This air district is consistently rated as having some of the worst air quality in the nation. Air pollutants affecting the region include nitrogen oxides (NOx), which affect smog levels, sulfur oxides (SOx), and particulate matter. Specifically, the South Coast Air Basin is designated by the U.S. Environmental Protection Agency (EPA) as a nonattainment area for National Ambient Air Quality Standards for both ozone and particulate matter less than 2.5 microns (PM2.5).

Factors contributing to the air quality problem include the fact that this region is home to the nation's second largest urban area, as well as geological conditions that enhance the formation of air pollution.² The residents and communities surrounding the Ports of Los Angeles and Long Beach face additional challenges of environmental damage and degraded air quality due to particulate matter produced by the heavy traffic of trucks, railroads, and shipping vessels associated with goods movement at the ports. Port-related vessels and vehicles are estimated to contribute 12 percent of the region's particulate matter, nine percent of NOx, and 45 percent of SOx.³

¹ BST Associates, *Trade Impact Study Final Report* (March 2007).

² Port of Los Angeles and Port of Long Beach, *San Pedro Bay Ports Clean Air Action Plan: Overview* (2006), at 11.

³ Port of Los Angeles and Port of Long Beach, *San Pedro Bay Ports Clean Air Action Plan: Fact Sheet*, available at http://www.portoflosangeles.org/CAAP/CAAP_Fact_Sheet_Final.pdf.

Diesel particulate matter has been found by the California Air Resources Board (CARB) to pose significant health risks. In 1998, California identified diesel particulate matter as a toxic air contaminant based on its link to premature death, its potential to cause cancer, and other health implications. According to CARB assessments, each year in California, diesel particulate matter contributes to 3,500 premature deaths, 250 cases of lung cancer, and thousands of hospital admissions and lost workdays.⁴

In addition, California's transportation sector is the leading source of greenhouse gas (GHG) emissions in the State, contributing over 40 percent of the State's annual GHG emissions.⁵

To address these environmental and public health concerns and in order to allow the ports to continue to grow, in November 2006, the Ports of Los Angeles and Long Beach adopted a plan, entitled the San Pedro Bay Ports Clean Air Action Plan ("Clean Air Action Plan"), for reducing emissions of air pollutants at the ports. The plan's components are expected to cut diesel particulate matter emissions from port-related sources by 47 percent within five years. The plan is also expected to reduce emissions of NOx by 45 percent, and reduce emissions of SOx by 52 percent.

Specific components of the Clean Air Action Plan include the following:

- requiring the use of clean diesel trucks at the ports (through "clean truck" programs);
- requiring vessels to use low sulfur fuels and reduce their speeds when transiting into and out of the ports;
- equipping container and passenger terminals with shore-side electricity, so vessels docked at the ports do not have to use diesel while docked;
- replacing or retrofitting cargo-handling equipment to meet stricter air emissions standards; and
- requiring the use of cleaner locomotives in the ports, including cleaner fuels and equipment that treats the exhaust produced by locomotives.⁶

The Clean Air Action Plan is scheduled to be updated this year. The original plan focused on the near-term, encompassing fiscal years 2006 through 2011, and the ports agreed to conduct periodic reviews and updates of the plan. Two public hearings were held on April 21 and 27, 2010 on the proposed updates, and public comments are due May 7, 2010. The updated plan is expected to reflect the most recent implementation status of the programs and include long-term targets for both reduction of air pollution from cargo movement at the ports and public health improvements.⁷

III. Clean Truck Programs

On October 1, 2008, as a component of the Clean Air Action Plan, the Ports of Los Angeles and Long Beach each launched clean truck programs. The goal of these programs is to reduce the

⁴ California Air Resources Board, *Health Effects of Diesel Exhaust Particulate Matter*, available at http://www.arb.ca.gov/research/diesel/dpm_health_fs.pdf.

⁵ *California Low Carbon Fuel Standard Executive Order*, Executive Order S-01-07 (January 18, 2007).

⁶ Port of Los Angeles and Port of Long Beach, *Fact Sheet: San Pedro Bay Ports Clean Air Action Plan*, available at http://www.portoflosangeles.org/CAAP/CAAP_Fact_Sheet_Final.pdf.

⁷ Port of Los Angeles and Port of Long Beach, *San Pedro Bay Ports Clean Air Action Plan: 2010 Update*, available at <http://www.cleanairactionplan.org/civica/filebank/blobload.asp?BlobID=2214>.

emissions of trucks servicing the ports by more than 80 percent below pre-program emissions levels by 2012.⁸ These reductions are to be achieved through a phased-in ban of older, polluting trucks that have not been retrofitted with emissions control technologies.

A. Port of Los Angeles Clean Truck Program

Under the Clean Truck program at the Port of Los Angeles, as of October 1, 2008, all trucks manufactured prior to 1989 have been prohibited entry to the port. On January 1, 2010, the port banned any trucks manufactured prior to 2003 that had not been retrofitted, but granted a 120-day extension through April 30, 2010 for trucking companies or drivers who had a clean truck on order. By January 1, 2012, any truck, regardless of age, that is not in compliance with the 2007 Federal (EPA) emissions standards will be banned from the port.⁹

The Los Angeles Clean Truck program was designed to limit access to the port to only those trucks and motor carriers operating under concession agreements with the port. Under the terms of the program as initially envisioned, licensed motor carriers (LMCs) would have been required to meet safety and security requirements and pay various fees, as well as register their trucks with the port. However, the Los Angeles program is currently the subject of ongoing legal action, as described in detail below, which has significantly altered the current structure and implementation of the Clean Truck program.

As initially developed, LMCS would have been required to pay \$2,500 for a five-year concession and to pay an annual fee of \$100 for each truck the carrier operates. The Port is currently not collecting these fees due to a court injunction. Beginning February 18, 2009, the Port began to collect a fee of \$35 from cargo owners for each TEU of containerized cargo loaded in the port moved by a diesel truck with a 2006 or older engine.¹⁰ This fee will be collected until 2012, when the entire fleet of trucks serving the Port of Los Angeles will be required to meet 2007 Federal emissions standards. Collection of the clean truck fee was originally scheduled to begin in November 2008, but was delayed twice due to extended Federal Maritime Commission (FMC) review.

The Port of Los Angeles, under its program as initially developed, proposed to offer concession agreements only to motor carriers whose drivers are direct employees of the motor carrier, not independent contractors. The program would have required LMCs to provide a plan to complete a phased transition to have 100 percent of their contracted drayage¹¹ handled by employee

⁸ The base year for emission under the Clean Air Action Plan is 2005.

⁹ The Clean Air Act generally pre-empts States from adopting stricter standards for newly-manufactured vehicles for air pollution from mobile sources (including motor vehicles and trucks); however, California was granted the right to qualify for a waiver of pre-emption under the original Act. California has sought and been granted waivers regularly to develop more stringent standards for motor vehicle emissions than those required by Federal law. California has different standards for low sulfur diesel than Federal standards, but California's truck emissions standards are identical to Federal standards. Under the clean truck programs at the ports of Los Angeles and Long Beach, entry will be conditioned based on the 2007 Federal (EPA) truck emissions standards.

¹⁰ Several categories of trucks are exempt from the fee, including alternative fuel trucks and LNG trucks. Cargo owners must pay \$70 for containers that are 40 feet or larger.

¹¹ Drayage generally refers to the short-haul movement of cargo within the port. The California Air Resources Board, in regulation, defines "drayage truck" as "any in-use on-road vehicle with a gross vehicle weight rating (GVWR) greater than 33,000 pounds operating on or transgressing through port or intermodal rail yard property for the purpose of

drivers within five years. As discussed below, the employee driver requirement was also challenged in litigation and the port is not currently implementing this aspect of the program, pursuant to a court injunction.

B. Port of Long Beach Clean Trucks Program

As under the Los Angeles program, since October 1, 2008, the Port of Long Beach has banned the entry of trucks of model year 1988 and older as part of the port's Clean Trucks program. Since January 1, 2010, trucks of model year 1993 have been forbidden from serving the Port of Long Beach, along with trucks from model years 1994 through 2003 that have not been retrofitted with emissions control technology. Beginning January 1, 2012, any truck not meeting the model year 2007 Federal emission standards will be prohibited from serving the Port of Long Beach.

The Port of Long Beach's Clean Trucks program initially envisioned only allowing LMCs holding concessions issued by the port to provide drayage services. However, as was the case in Los Angeles, the concession agreement requirement was the subject of litigation by the ATA, as described in detail below. The port settled the lawsuit with ATA in October 2009, and modified its program in accordance with the settlement agreement terms.

The port no longer requires LMCs to hold concessions with the port; instead carriers must register with the port by submitting a Motor Carrier Registration and Agreement form and paying a one-time fee of \$250, as well as a \$100 annual fee per truck. Like the Port of Los Angeles, on February 18, 2009, the Port of Long Beach began collecting a \$35 fee for each 20-foot TEU loaded in the port moved by a truck that does not meet 2007 Federal emissions standards. Trucks that meet the emissions standards and that were financed by Clean Trucks program grants, if the financing was arranged after April 20, 2009, must also pay the fee. The fee does not apply to containers that move through the port by train or on Liquid Nitrogen Gas (LNG) trucks.

The Long Beach Clean Trucks program differs from the program developed by the Port of Los Angeles in that Long Beach did not propose to require a motor carrier to use employee drivers to qualify for a concession agreement. Long Beach proposed to allow LMCs to utilize either employees or sign lease agreements with independent contractors as drayage drivers. Long Beach did propose to include hiring preference provisions and requirements to notify drivers of the availability of health insurance. Although concessions are no longer part of the Long Beach program, LMCs are eligible to register with and service the port whether they use employees or independent drayage drivers, just as they would have been able to do under Long Beach's proposed concession agreements.

C. Financing Clean Trucks

As part of the Clean Truck program, the Port of Los Angeles implemented an incentive grant program to promote and facilitate replacement of older, more polluting trucks. LMCs with concession agreements were eligible to apply for and receive grants from the port of \$20,000 per clean truck that complies with the new 2007 emissions standards. To qualify for an incentive grant, an LMC had to purchase or finance a new, compliant truck and place it into service by January 15,

loading, unloading or transporting cargo, such as containerized, bulk or break-bulk goods.”
<http://www.arb.ca.gov/regact/2007/drayage07/finreg1209.pdf>.

2009. According to information provided by the port, the port has awarded 2,200 incentive grants in the amount of \$20,000 each. To date, 2,087 trucks have been approved under the incentive grant program, for a total expenditure by the port of \$41.6 million. The funds collected from the \$35 container fee described above have partially offset the cost of these grants. Through February 2010, the port had collected approximately \$60 million in container fees. The port has incurred significant administrative costs in establishing and implementing the incentive program. The port estimates it has expended an additional \$50 to \$60 million on the program, beyond the revenue collected from container fees.

The Port of Long Beach also offers incentive grants to assist trucking companies and drivers in replacing older, dirtier trucks. All companies receiving funding from the port are required to provide proof that they actively serve the port and must report annually to the port on the use of their truck. According to port data, the port has awarded 250 grants or lease subsidy awards to date, and an additional 20 truck replacement grants are expected to be completed by the end of May. To date, the port has awarded \$32.8 million in grants. The average award size per truck is \$131,500, and a high percentage of awards have been for LNG trucks, which are more expensive. Through April 14, 2010, the port has collected approximately \$37.4 million in container fees, which have been used to fund truck replacement grants.

Additional funding is available to LMCs to offset the purchase of clean trucks by Proposition 1B. In 2006, California voters approved the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006, typically referred to as Proposition 1B. Proposition 1B authorized the State to issue almost \$20 billion in general obligation bonds, including \$1 billion to fund projects to reduce emissions and improve air quality in trade corridors. This program, administered by the South Coast Air Quality Management District, is expected to provide incentive grants to fund up to 1,500 additional clean trucks (diesel and LNG). The Port of Los Angeles will provide funding of \$50,000 per truck under this program.

In addition, a group of cargo owners, logistics companies, and shippers have formed the Coalition for Responsible Transportation to support “the implementation of practical and responsible solutions that reduce port truck pollution,” by providing private financing for low interest loans and other solutions. To date, the group estimates it has helped replace 1,500 older port trucks in addition to those trucks receiving funding from the port or the State of California.

D. Emissions Reductions

As of December 2009, there were 16,022 trucks registered with the Port of Los Angeles. Of these, 57 percent, or 9,103 trucks, were actually in service. In March 2010, the port estimates that 86 percent of cargo moves were conducted by compliant clean trucks. The port estimates that since the start of the Clean Truck program, port truck air emissions have been reduced approximately 70 percent compared to emissions levels in 2007. Monitoring data shows that diesel particulate matter at the port from all sources, including vessels, locomotives, harbor craft, trucks, and cargo handling equipment, were reduced by 45 percent in 2009 from pre-program levels.

As of May 2010, the Port of Long Beach estimates that 90 percent of cargo moves at the port were conducted by clean trucks meeting 2007 emissions standards. The port estimates that it has already achieved its goal of reducing pollution from port trucks by 80 percent, two years ahead of schedule.

IV. Legal Challenges to Clean Truck Programs

The proposed implementation of the clean truck programs at Los Angeles and Long Beach, through mandatory concession agreements, has been highly controversial and has been the subject of several legal challenges. ATA brought suit against both the Port of Los Angeles and the Port of Long Beach to stop implementation of the concession agreement requirements of the clean truck programs in each location. Although the Port of Long Beach program did not require a motor carrier to use employee drivers, ATA sued Long Beach nonetheless.

On July 28, 2008, ATA filed a complaint in the U.S. District Court for the Central District of California against the Board of Harbor Commissioners of the City of Los Angeles, the Board of Harbor Commissioners of the City of Long Beach, the cities of Los Angeles and Long Beach, and the Harbor Departments of the cities of Los Angeles and Long Beach. The ATA complaint alleged that the concession plans approved by the ports of Los Angeles and Long Beach would “unlawfully re-regulate the federally-deregulated trucking industry and, effective October 1, 2008, bar more than one thousand licensed motor carriers from continuing to enter and service routes in interstate commerce directly to and from the ports of San Pedro Bay.”¹²

In addition, on July 30, 2008, ATA moved for a preliminary injunction, arguing that the requirement for concession agreements violates a provision of current Federal motor carrier law (49 U.S.C. § 14501) that pre-empts States or local governments from enacting laws “related to a price, route, or service of any motor carrier.”

On September 9, 2008, the U.S. District Court denied ATA’s petition for a preliminary injunction. On September 10, 2008, ATA filed an appeal of the denial of the preliminary injunction with the United States Court of Appeals for the Ninth Circuit. On March 20, 2009, the appeals court reversed the decision of the U.S. District Court, directing the court to grant an appropriate preliminary injunction.

On April 29, 2009, the U.S. District Court granted a preliminary injunction to put on hold several elements of the Clean Truck program in Los Angeles and the Clean Trucks program at Long Beach, based on section 14501 of the code. Specifically, the court prohibited the Port of Los Angeles from:

- enforcing the requirement that LMCs with a concession transition to employee drivers;
- enforcing the clean truck tariff (but marine terminals can continue to enforce and collect the tariff);
- requiring LMCs to submit an off-street parking plan;
- requiring LMCs keep certain records;
- requiring LMCs to submit financial information as part of a concession application;
- collecting concession fees or annual registration fees; and
- conducting periodic reviews and audits of LMCs.¹³

¹² 2008 U.S. Dist. Ct. Pleadings 4920.

¹³ Port of Los Angeles, *Notice of Court Decision Affecting the Port of Los Angeles Clean Truck Program*, available at http://www.portoflosangeles.org/ctp/CTP_Notice_of_Court_Decision.pdf.

The court prohibited the Port of Long Beach from:

- enforcing the clean truck tariff (which was later reinstated);
- enforcing a requirement that LMCs give hiring preference to drivers with a history of providing drayage services at the port;
- requiring LMCs to submit a parking plan;
- requiring LMCs keep certain records;
- enforcing the requirement that LMCs provide proof that they have notified drivers of the availability of health insurance programs;
- requiring LMCs to demonstrate that they possess the financial capability to perform their obligations to the port; and
- enforcing provisions related to default and termination unrelated to motor vehicle safety.¹⁴

Both ports were eventually able, with some modifications, to continue the environmental elements of the program to ban dirty diesel trucks and collect fees from cargo owners to raise funds to help finance the replacement of the older trucks. Importantly, ATA did not challenge the phase out and ban of older and dirtier trucks, only the implementation of the program through mandatory concession agreements. Because it was not within the scope of the litigation, the court did not analyze whether the phase out and ban of dirty trucks as set forth in the clean truck programs (or other environmental requirements generally) is in conflict with the pre-emption provisions of Federal motor carrier law.

The lawsuit against the Port of Los Angeles is pending in the U.S. District Court. Oral arguments for the trial began on April 20, 2010 and ended on April 29, 2010. The Judge ordered both sides to submit closing argument written briefs by May 14, 2010. A timeline for a decision in the case has not been announced.

ATA and the Port of Long Beach reached a settlement agreement on October 19, 2009. The settlement eliminated concession agreements, but ATA agreed to a requirement that companies must register with the port. The settlement was approved by the same U.S. District Court judge that is hearing the trial discussed above. Shortly after the settlement, in January 2010, NRDC and the Sierra Club filed suit against the Port of Long Beach, on the grounds that the settlement with ATA violated city and State law because the port did not conduct an environmental review of the settlement. The suit also challenges a substantive provision of the settlement agreement that requires the port to obtain ATA's written approval prior to making any material change to registration requirements of the Clean Trucks program. No timeframe has been set for further action in this case.

Separately, under the Bush Administration, the FMC sought an injunction of the program on the grounds that two of the Los Angeles program's elements, the fee structure and the requirements that drivers be employees, unreasonably limit competition. The FMC enforces international ocean shipping pursuant to the Shipping Act of 1984 (P.L. 98-237), which requires agreements between marine terminal operators to be filed with the FMC, and provides an exemption from antitrust laws for agreements that the FMC approves. The Ports of Los Angeles and Long Beach sought anti-trust immunity to pursue similar environmental regulations; however the FMC believed that the

¹⁴ Email from the Port of Long Beach to Committee staff (April 27, 2010).

concession agreements were not covered by this immunity and could impact competition. The U.S. District Court for the District of Columbia denied the request for a preliminary injunction on April 16, 2009. On June 16, 2009, the FMC requested the court's approval to withdraw the case.

V. Economic Analysis of Port Drayage Industry

The Ports of Los Angeles and Long Beach developed their respective clean truck programs to significantly reduce emissions from trucks moving containers in and out of the ports, and to address related environmental and public health impacts. However, in designing its program, the Port of Los Angeles also specifically set out to address economic and security concerns to improve port operations, including ensuring there would be a sufficient number of drivers to haul the growing number of containers in the port. The port was concerned that due to low wages among port drayage drivers, and the new requirements of the Transportation Worker Identification Credential (TWIC), many drivers may choose to leave the drayage industry. Specifically, through the Clean Truck program, the Port of Los Angeles sought to “improve the stability of the port trucking market” and “ensure long term sustainability” through the improved efficiency and reliability of trucking operations and “incomes that attract and retain drivers”.¹⁵

An economic analysis of the proposed Los Angeles Clean Truck program, published in September 2007, assessed the structure of the port drayage industry prior to implementation of the program.¹⁶ This study found that most LMCs servicing the port functioned largely as brokers: they held few assets, had little pricing power over shippers due to the intense competition for drayage services, and relied heavily on contracts and leases with independent drivers to move cargo.¹⁷

Port drayage drivers are not the same as independent owner-operators that are typically seen in long-haul trucking. The vast majority of these drivers have not registered as motor carriers with the U.S. Department of Transportation (DOT), and therefore cannot contract to provide their trucking services directly to, and negotiate rates with, shippers or cargo owners. The above-referenced economic analysis found that, in 2007, the median take-home income for a port drayage driver was approximately \$29,000 per year, or \$12 an hour. While gross salaries of port drivers tend to be higher, drivers paid roughly \$46,000 per year in costs to maintain and operate their trucks.¹⁸ Independent contractors do not receive paid vacation or health insurance, and are not eligible for benefits employees have under Federal and State law, including unemployment insurance, workers compensation, or employer-paid social security, Medicare, and Medicaid. These drivers are also not covered under Occupational Safety and Health Administration (OSHA) laws, the Family Medical Leave Act (P.L. 103-3), Equal Employment Opportunity laws; they are not afforded whistleblower protections; and they are not covered by the National Labor Relations Act (P.L. 74-198).

The study concluded that the cost of replacing each independent contractor with an employee driver for port drayage work at the Ports of LA and Long Beach would be \$77,400 annually. This is based on a higher wage rate (\$20/hour), the need to pay overtime for work over 40

¹⁵ Presentation of Executive Director Knatz to the Harbor Commission (March 20, 2008), available at http://www.portoflosangeles.org/CTP/CTP_ED_Presentation.pdf.

¹⁶ John E. Husing, Thomas E. Brightbill, and Peter A. Crosby, *San Pedro Bay Ports Clean Air Action Plan, Economic Analysis, Proposed Clean Truck Program* (September 7, 2007).

¹⁷ *Id.* at 15.

¹⁸ *Id.* at ii and 16.

hours a week, and Federal and State mandated benefits. In addition, the study found that employee drivers are available to haul loads 28 percent fewer minutes in a work day compared to independent drivers. Therefore, replacement of independent contractors with employee drivers would require additional drivers to make up for the loss in driver productivity.¹⁹ The study also estimated that an employee driver mandate is likely to negatively affect smaller LMCs and raise the cost of moving freight.²⁰

Prior to the Clean Truck program, most drivers owned their trucks. Purchasing a new, clean truck totals approximately \$150,000, including financing costs. Routine maintenance, such as routine oil changes and degreasing, on new trucks can also be costly and needs to be done as often as every 90 days. Due to the expense, many drivers cannot afford to purchase a new truck and most cannot secure financing on their own and therefore need backing from a motor carrier or shipper. As a result, the vast majority of drivers currently moving cargo in new clean trucks at the Ports of Los Angeles and Long Beach are doing so in a truck leased through a motor carrier that has purchased or leased the truck. Many port drayage drivers are making truck payments for the first time, or at far higher levels than they have ever in the past working in the port drayage industry.

VI. Day Pass Program

Long-haul independent owner-operators who own their trucks and do not regularly need to access the port have worked with the Port of Los Angeles and the Port of Long Beach on the development of a day pass program. Both ports allow infrequent motor carriers, including independent owner-operators with their own DOT operating authority, to continue to access the port without a concession agreement through temporary access permits. A temporary permit costs \$30 per pass, and an operator can apply for 24 permits per year per truck. Trucks with permits may only enter either port if the truck otherwise meets the applicable emissions requirements under the truck ban at the time of entry. To access the ports, trucks must also have an activated Radio Frequency Identification (RFID) tag; acquiring and activating this tag costs \$95, a one-time charge before the truck can enter either port for the first time.

VII. Federal Motor Carrier Law

Federal motor carrier law (49 U.S.C. § 14501) pre-empts States or local governments from enacting laws “related to a price, route, or service of any motor carrier”. This provision was enacted in the Federal Aviation Administration Authorization Act of 1994 (P.L. 103-305) and codified in statute in the ICC Termination Act of 1995 (P.L. 104-88). This section of the code excludes from pre-emption, and allows States to continue to regulate, in the following areas: motor vehicle safety, highway route controls, vehicle size and weight, minimum financial responsibility for motor carriers, intrastate transportation of household goods, tow truck operations, and cargo liability and bills of lading. This is the provision of law on which the ATA lawsuit relies in its challenge of the Los Angeles Clean Truck program.

The Port of Los Angeles, the Teamsters, and environmental groups support amendments to this statute to exclude from Federal pre-emption actions taken by a State or a political subdivision of

¹⁹ *Id.* at iv-v.

²⁰ *Id.* at vi. The study produces a very rough estimate that 376 LMCs could face losses under the Clean Truck program with an employee mandate.

a State to condition entry to a port facility for the purpose of improving the environmental, safety, security, or congestion conditions in and around ports. The Port of Los Angeles argues that without a change in law it cannot require meaningful concession agreements as in the original Clean Truck program, it lacks direct contractual remedies against motor carriers if they fail to comply with the truck ban, and that concession agreements are needed to ensure that the environmental regulations are implemented and enforced. Environmental groups have expressed concern that without a legislative change, environmental considerations, such as the elements of the Los Angeles and Long Beach clean truck programs, and any future clean truck initiatives, could be subject to a pre-emption challenge.²¹

The ATA and most LMCs strongly oppose the Los Angeles program's requirement for a concession agreement, including the use of employee drivers, and oppose an amendment to Federal law to allow such requirements to continue. The trucking industry argues that concession agreement requirements, and any legislative change to allow them, would permit States to re-institute partial economic regulation at ports. The ability to do so was largely eliminated when trucking was deregulated in the early 1980s. Shippers and other cargo owners have expressed concerns that concession agreement requirements may limit the number of available motor carriers, slowing the movement of their freight and raising costs. In many cases, cargo owners have agreed to pay higher rates to LMCs to defray the cost of converting to cleaner trucks, and to avoid being charged the clean truck fee that they would otherwise have to pay to move cargo in a non-compliant truck.

²¹ Because it was not within the scope of the ATA litigation, the U.S. District Court in the Los Angeles and Long Beach cases did not analyze whether the phase out and ban of dirty trucks (or other environmental requirements generally) is in conflict with Federal motor carrier law.

WITNESSES

PANEL I

Captain John Holmes

Deputy Executive Director, Operations
Port of Los Angeles

Mr. J. Chris Lytle

Deputy Executive Director
Port of Long Beach

PANEL II

Mr. Jose M. Covarrubias

Independent Truck Driver

Mr. Robert Digges, Jr.

Vice President & Chief Counsel
American Trucking Associations, Inc.

Mr. James Jack

Executive Director
Coalition for Responsible Transportation

Mr. Frederick H. Johring

President
Golden State Express, Inc. and Golden State Logistics, Inc.

Ms. Melissa C. Lin Perrella

Staff Attorney
Natural Resources Defense Council

Mr. Fred Potter

International Vice President and Port Division Director
International Brotherhood of Teamsters

Mr. Joe Rajkovacz

Director of Regulatory Affairs
Owner-Operator Independent Drivers Association