



Ports File Defense of Clean Truck Program **Long Beach and Los Angeles ports uphold program in court filing**

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The ports of Long Beach and Los Angeles filed their opposition today, in the U.S. District Court in Los Angeles, in response to the preliminary injunction motion from the American Trucking Associations (ATA) that seeks to stop the ports' Clean Trucks Program concession requirement.

The ports' response demonstrates that the ATA's requested injunction is without legal basis for three reasons:

First, the statute that the ATA relies upon does not apply to the special tidelands property on which the ports are located. The U.S. Supreme Court has previously decided that the tidelands were granted to California directly under the U.S. Constitution and subsequently granted to the Cities. Therefore, absent explicit Congressional intent -- which is not present in the federal statute relied upon by the ATA -- a federal statute will not interfere with the ports' rights to manage and control these sovereign lands as they see fit.

Second, the statute does not apply to actions taken by the ports as landholders and as "commercial enterprises ... in the business of providing world-class port facilities and services." The ports rely on many U.S. Supreme Court and Ninth Circuit cases which recognize that the "Market Participant Doctrine" allows programs such as the Clean Trucks Program concession requirement.

Third, the statute clearly does not apply to port actions directed to the safety and security of the ports, which are also among the major goals of the Clean Trucks Program concession requirement.

The ports' opposition also emphasizes that the ATA's alleged injuries are merely financial in nature and, therefore cannot justify the extraordinary action of the preliminary injunction it seeks. Furthermore, these claimed financial injuries are more than outweighed by the public health and security interests of those who work at the ports and who live near the ports.

"The ATA lawsuit directly attacks the ports' efforts to dramatically reduce truck-related pollution and improve the safety, security and efficiency of Port operations," said Port of Long Beach Executive Director Richard Steinke. "We strongly believe that our plan is lawful and we will vigorously oppose any action that will delay the Clean Trucks Program."

Port of Los Angeles Executive Director Dr. Geraldine Knatz testified, "I believe that a substantial delay in the implementation of our Clean Truck Program will have dire consequences for (1) the air quality in the area in and around the Port, (2) for the people who work at the Port or live nearby or near the transportation corridors used by trucks serving the Port, and (3) for the future of the Port as an enterprise."

The ports also submitted the testimony of Dr. Elaine Chang, the Deputy Executive Director of the South Coast Air Quality Management District. She testified that, "the area around the ports suffers an average cancer risk from air pollution that is more than 60% higher than the average in the South Coast Air Basin. It is imperative that [pollutants] emitted by Port sources are immediately and dramatically reduced."

The ports also submitted testimony from Licensed Motor Carriers (LMCs) who disagreed with the ATA's claims that the concession program would disrupt the trucking business at the ports. The LMCs testify that they do not expect the program to disrupt their businesses or to cause them to incur financial losses. In addition, the LMCs declare their intention to apply for concessions from each of the ports.

The Court will hold a hearing on the ATA's motion for preliminary injunction on September 8 and a decision is expected sometime after that date. The ports are committed to moving forward with the Clean Trucks Program as planned on October 1. The ATA has not challenged certain aspects of the Clean Trucks Program including the Truck Ban that prohibits 1988 and older trucks from entering the ports on and after October 1, 2008, the Clean Trucks Fee which also goes into affect October 1, and the ports' grant/lease programs which assist truckers in acquiring new, clean trucks (applications for the first round of funds are due September 4).

The Port of Long Beach is one of America's premier seaports, a trail blazer in goods movement and environmental stewardship. Trade valued annually at more than \$150 billion moves through Long Beach, including clothing, toys, shoes, furniture and consumer electronics. Goods movement at the Port supports more than 316,000 careers and jobs in Southern California. Serving as a model for ports around the world with its Green Port Policy, the Port of Long Beach pioneered such innovative environmental programs as the Green Flag vessel speed reduction air quality program, Green Leases with environmental covenants and the San Pedro Bay Ports Clean Air Action Plan.

The Port of Los Angeles, also known as "America's Port," has a strong commitment to developing innovative strategic and sustainable operations that benefit the economy and the quality of life for the region and the nation it serves. A recipient of numerous environmental awards, including the U.S. Environmental Protection Agency's 2007 Clean Air Excellence Award, the Port of Los Angeles is committed to innovating cleaner, greener ways of doing business. As the leading seaport in North America in terms of shipping container volume and cargo value, the Port generates 919,000 regional jobs and \$39.1 billion in annual wages and tax revenues. A proprietary department of the City of Los Angeles, the Port is self-supporting and does not receive taxpayer dollars. The Port of Los Angeles - A cleaner port. A brighter future.

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