

Clean Truck Program at California Ports Headed Back to Court

WASHINGTON, DC, October 30, 2008 (ENS) - Less than one month old, the Clean Trucks Program at the ports of Los Angeles and Long Beach has run into another legal roadblock. In a closed-session meeting in Washington on Wednesday, the three-member Federal Maritime Commission voted 2-1 to seek a court injunction against key components of the program.

Environmentalists who have encouraged and supported such a program for years, were indignant. "Two commissioners in Washington, DC should not make a decision behind closed doors to ruin clean air for all southern Californians," fumed Sierra Club Executive Director Carl Pope.

The fleet turnover program that took effect October 1 is intended to permanently reduce diesel air pollution in southern California by retiring older, polluting cargo trucks and replacing them with newer, cleaner trucks.

As of October 1, 2008, the oldest and dirtiest trucks were banned from operating at the ports as part of the ports' Clean Air Action Plan to reduce emissions and improve the environment. More than 2,000 pre-1989 diesel trucks were retired, reducing truck-produced air pollution at the ports 50 percent overnight.



Diesel cargo trucks enter the Port of Long Beach. (Photo courtesy [Port of Long Beach](#))

About 15,000 diesel cargo trucks are scheduled to be phased out during the next five years and replaced with EPA 2007 compliant trucks. Replacing the port truck fleet is expected to reduce truck-produced air pollution at the ports 80 percent by 2012.

The Federal Maritime Commission's action follows two failed attempts by the American Trucking Association to block the Clean Trucks Program, first in U.S. District Court and then in the U.S. Court of Appeals for the Ninth Circuit.

The two commission members who voted to seek an injunction say the Clean Trucks Program would reduce competition and increase costs. They particularly objected to a requirement that mandates exclusive use of employee-drivers in the program.

Commissioners Harold J. Creel, Jr. and Rebecca Dye said they appreciate the potential environmental and public health goals of the ports' Clean Trucks Program, and recognize that some transportation cost increases may be necessary to generate clean air and public health benefits.

But they say that as it stands the program will generate "substantial transportation cost increases, beyond what is necessary to generate the public benefits asserted by the ports."

Commissioners Creel and Dye believe that "surgical removal of substantially anti-competitive

elements of the agreement, such as the employee mandate, will permit the ports to implement on schedule, those elements of the CTP that produce clean air and improve public health."

The third commissioner, Joseph Brennan, dissented from this determination.

Commissioner Brennan said he "considers it a colossal mistake for the commission to try to block a program of environmental protection and economic expansion that has been endorsed as reasonable and necessary by, among others, Los Angeles Mayor Antonio Villaraigosa, the Los Angeles Board of Harbor Commissioners, U.S. Senators Dianne Feinstein and Barbara Boxer, Speaker of the House Nancy Pelosi, U.S. Representatives Laura Richardson and Loretta Sanchez, and some 30 other members of the California delegation of the U.S. House of Representatives."

In Brennan's view, the commission should give more deference to the policy judgments made in this matter by elected officials. Following years of extensive study in a public process with input from all concerned, Los Angeles has adopted a Clean Trucks Program that fairly falls within the broad definition of "reasonable" under the Shipping Act.

"Under these circumstances, the Commission majority has no basis for forcing the Port of Los Angeles to adopt an alternative port-management model that individual commissioners happen to think is reasonable," Brennan said today.

Three environmental groups say the Federal Maritime Commission's move could delay clean air gains for millions of southern California residents.

The commission violated several federal environmental laws by pursuing the injunction, according to an appeal to the commission filed by the Natural Resources Defense Council, the Coalition for Clean Air, and Sierra Club.

NRDC Executive Director Peter Lehner said, "The commission is siding with a filthy industry and blocking the path to clean air and public health. The ports have a right and obligation to keep dirty trucks off of their property, and the commission should get out of the way."

Sierra Club Executive Director Carl Pope declared, "Port drivers and the community have been paying the price with their lungs and livelihoods for too long."

"This is the Bush administration's last-ditch effort to let the nation's largest trucking lobby off the hook for the pollution they create," Pope said.

"Capitalized companies can afford to buy and maintain the clean trucks we need - individual workers cannot. And that's why we need the employee requirement to sustain clean up in the long run," Pope explained.

The environmental groups intend to file further litigation against the commission this week.