



R-13

Date: December 1, 2009

To: Honorable Mayor and Members of the City Council

From: Councilwoman Gerrie Schipske, Fifth District
Council Member Tonia Reyes Uranga, Seventh District
Councilwoman Rae Gabelich, Eighth District

Subject: **Request a Report regarding the Stipulated Settlement between Port of Long Beach and the American Trucking Association involving the Clean Truck Plan.**

The American Trucking Associations, Inc. ("ATA") filed, on July 28, 2008, a Complaint for Declaratory and Injunctive Relief against the City of Long Beach, the Harbor Department of the City of Long Beach, and the Board of Harbor Commissioners of the City of Long Beach (the "Long Beach Defendants") challenging certain provisions of the Port of Long Beach Clean Truck Program. The Port of Long Beach, acting on behalf of the Long Beach Defendants, agreed to a Stipulation of Settlement and Joint Motion for Voluntary Dismissal between the ATA and the Long Beach Defendants, which includes the City of Long Beach.

On November 16, the Natural Resources Defense Council (NRDC) and others filed an Appeal from the Board of Harbor Commissioner's approval of the settlement of litigation and the Commission's approval of a resolution on November 2, 2009 to implement the settlement agreement. The City Attorney rejected the NRDC's appeal on the grounds that the Appeal is "untimely" and because the Appeal conflicts with the express terms of the Court Order in which the Federal District Court retains exclusive jurisdiction and venue.

We would like to request a report from the City Attorney and the Port of Long Beach regarding the stipulated settlement between Port of Long Beach Board of Harbor Commissioners and the American Trucking Association.

Recommended Action:

Request the City Attorney and Port of Long Beach (POLB) to provide an "on agenda" report to the City Council regarding the Stipulated Settlement between POLB and the American Trucking Association involving the Clean Trucks Program and the Natural Resources Defense Council's appeal of the Stipulated Settlement and the Board of Harbor Commission Resolution HD-2538.

Attachments: Settlement Documents (16 Pages)

NRDC et al Appeal Letter dated Nov. 16, 2009

City Attorney response to NRDC Appeal letter dated Nov. 20, 2009

Board of Harbor Commission Nov 2, 2009 Resolution HD-2538.

Attachment #1

**Port of Long Beach and American Trucking Association Stipulated Settlement
Agreement Documents (16 Pages)**

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Counsel are identified
on the signature pages that follow

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

AMERICAN TRUCKING
ASSOCIATIONS, INC.

Plaintiff,

vs.

THE CITY OF LOS ANGELES, THE
HARBOR DEPARTMENT OF THE
CITY OF LOS ANGELES, THE
BOARD OF HARBOR
COMMISSIONERS OF THE CITY
OF LOS ANGELES, THE CITY OF
LONG BEACH, THE HARBOR
DEPARTMENT OF THE CITY OF
LONG BEACH, and THE BOARD
OF HARBOR COMMISSIONERS
OF THE CITY OF LONG BEACH,

Defendants.

Case No. CV 08-04920 CAS (CTx)

**STIPULATION OF SETTLEMENT
AND JOINT MOTION FOR
VOLUNTARY DISMISSAL WITH
PREJUDICE BETWEEN PLAINTIFF
ATA AND LONG BEACH
DEFENDANTS**

Hon. Christina A. Snyder

Whereas, plaintiff American Trucking Associations, Inc. (“ATA”) filed on July 28, 2008, a Complaint for Declaratory and Injunctive Relief against, *inter alia*, the City of Long Beach, the Harbor Department of the City of Long Beach, and the Board of Harbor Commissioners of the City of Long Beach (the “Long Beach Defendants”);

Whereas, the parties, being duly advised by counsel, have reached an amicable settlement of the claims asserted in the Complaint against the Long

1 Beach Defendants, and in furtherance of that Settlement jointly have drafted a
2 "Registration and Agreement," attached hereto as Exhibit A;

3 Whereas, in light of this settlement, the parties have agreed that ATA's
4 Complaint against the Long Beach Defendants should be dismissed on the terms
5 set forth hereinbelow;

6 WHEREFORE, the parties do Stipulate as follows:

7 1. ATA shall dismiss with prejudice its Complaint for Declaratory and
8 Injunctive Relief against the Long Beach Defendants.

9 2. Within fifteen (15) business days following entry of the Order on this
10 stipulation for dismissal, the Long Beach Defendants shall make available at the
11 Port, on its internet website, and by electronic mail to all motor carriers that have
12 executed a Concession Agreement with the Port of Long Beach, the Registration
13 and Agreement to all licensed motor carriers wishing to provide drayage services
14 at the Port of Long Beach.

15 3. The Long Beach Defendants agree that the filing by a carrier of a
16 signed and complete Registration and Agreement becomes effective as of the date
17 of filing and supersedes any Concession Agreement an individual carrier may
18 previously have executed with the Port. The Long Beach Defendants further agree
19 that they shall not enforce any term of the Concession Agreement against a carrier
20 that has filed a signed and complete Registration and Agreement, after such filing
21 date.

22 4. The parties agree that any material change by the Long Beach
23 Defendants to the Registration and Agreement without the prior agreement of ATA
24 set forth in a writing signed by representatives of each party having the express
25 authority to so bind, and the institution of suit by ATA in contravention of
26 paragraph 5 hereof, each would constitute a breach of this Settlement.
27

1 5. ATA shall not be precluded by this Settlement from filing a new
2 complaint reinstating any claims previously brought against the Long Beach
3 Defendants and/or asserting additional claims against the Long Beach Defendants
4 arising from the Concession Agreement or the Registration and Agreement if the
5 Long Beach Defendants—

6 (a) fail to comply substantially and timely with the requirements of
7 paragraphs 2 and 3 of this Settlement; or,

8 (b) at any future time amend in any material way the terms of, or the
9 procedures applicable to, the Registration and Agreement without the prior
10 agreement of ATA as set forth in paragraph 4 above.

11 6. Each of the parties shall bear its own costs and attorney fees.

12 7. Neither ATA nor the Long Beach Defendants shall use either the fact
13 of this Settlement or the terms of the Registration and Agreement as evidence in
14 any future litigation between these parties, other than in an action to enforce the
15 terms of this Settlement.
16

17 8. By entering into this Settlement, the Long Beach Defendants do not
18 admit the validity of any claims asserted against them by ATA; and ATA does not
19 admit the validity of any defenses asserted against such claims by the Long Beach
20 Defendants.

21 9. The parties agree that a remedy for specific performance shall be
22 available to either party for a breach of this Settlement.
23

24 10. The United States District Court for the Central District of California
25 shall retain exclusive jurisdiction and venue over an action to enforce this
26 Settlement and Voluntary Dismissal.
27

1 Upon the foregoing Stipulation, ATA and the Long Beach Defendants
2 jointly request that the Court enter a voluntary dismissal with prejudice of ATA's
3 claims against the Long Beach Defendants.

4 Respectfully submitted,

5 Dated: October 19, 2009

6 FOR DEFENDANTS THE CITY OF LONG BEACH, THE HARBOR
7 DEPARTMENT OF THE CITY OF LONG BEACH, and THE BOARD OF
8 HARBOR COMMISSIONERS OF THE CITY OF LONG BEACH

9 /s/ C. Jonathan Benner

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1 FOR PLAINTIFF AMERICAN TRUCKING ASSOCIATIONS, INC.

2

3 /s/ Christopher C. McNatt, Jr.
4 Christopher C. McNatt, Jr. (State Bar #174559)
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15 Chief Counsel, ATA Litigation Center
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rdigges@trucking.org

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

AMERICAN TRUCKING
ASSOCIATIONS, INC.

Plaintiff,

vs.

THE CITY OF LOS ANGELES, THE
HARBOR DEPARTMENT OF THE
CITY OF LOS ANGELES, THE
BOARD OF HARBOR
COMMISSIONERS OF THE CITY
OF LOS ANGELES, THE CITY OF
LONG BEACH, THE HARBOR
DEPARTMENT OF THE CITY OF
LONG BEACH, and THE BOARD
OF HARBOR COMMISSIONERS
OF THE CITY OF LONG BEACH,

Defendants.

Case No. CV 08-04920 CAS (CTx)

**[PROPOSED] ORDER OF
VOLUNTARY DISMISSAL WITH
PREJUDICE OF LONG BEACH
DEFENDANTS**

Hon. Christina A. Snyder

Before the Court is the Stipulation of Settlement and Joint Motion for Voluntary Dismissal With Prejudice between Plaintiff Trucking Associations, Inc. (“ATA”) and the City of Long Beach, the Harbor Department of the City of Long Beach, and the Board of Harbor Commissioners of the City of Long Beach (the “Long Beach Defendants”) (hereinafter “Stipulation of Settlement”). ATA and the Long Beach Defendants, being duly advised by counsel, have reached an amicable settlement of the issues between them set forth in the Complaint and in furtherance thereof have agreed to the terms set forth in the Stipulation of Settlement and have

1 jointly drafted a "Registration and Agreement," attached to the Stipulation of
2 Settlement as Exhibit A.

3 Having considered the Stipulation of Settlement, the Court finds that the
4 Motion should be granted.

5 WHEREFORE, it is hereby

6 ORDERED that the claims against the Long Beach Defendants in ATA's
7 Complaint for Declaratory and Injunctive Relief shall be and are hereby dismissed
8 with prejudice only as to the Long Beach Defendants, and each of the parties shall
9 bear its own costs and attorney fees; and it is

10 FURTHER ORDERED that the United States District Court for the Central
11 District of California shall retain exclusive jurisdiction and venue over any action
12 to enforce the terms of the Stipulation of Settlement, and it is

13 FURTHER ORDERED that the Preliminary Injunction entered on April 28,
14 2009, shall remain in effect as to the Long Beach Defendants until the earlier of the
15 expiration of all Concession Agreements entered into by the Long Beach
16 Defendants, or the dissolution of all injunctions in this action against any provision
17 that is included in such Concession Agreements, and it is

18 FURTHER ORDERED that to the extent that any term of the Stipulation of
19 Settlement and of Exhibit A thereto may conflict with any provision of the April
20 28, 2009 Preliminary Injunction, the provisions of the Stipulation of Settlement
21 and Exhibit A shall be deemed to have so modified the Preliminary Injunction.

22
23 SO ORDERED, this ____ day of _____, 2009

24
25
26 _____
27 Christina A. Snyder
28 United States District Judge

Exhibit "A"

MOTOR CARRIER REGISTRATION AND AGREEMENT
PORT OF LONG BEACH

All motor carriers wishing to perform drayage services at the Port of Long Beach must, via this Form, register with the Port and agree to provide certain operational information to assist the Port in monitoring motor carrier compliance with various safety, environmental, and security regulations pertaining to the provision of drayage services at the Port. Registration by a motor carrier is effective upon submission of the completed Form accompanied by the \$250 registration fee.

I. Motor Carrier General Registration Information:

- A. Name: _____
Address: _____

Telephone Number: _____
Website (if any): _____

All written notices required under this Registration and Agreement shall be sent to the address listed above.

- B. Principal Contact: _____
Title: _____
Email Address: _____
Telephone Number: _____
Facsimile Number: _____
- C. Federal Taxpayer I.D. Number: _____

II. Licensing Information and Certification:

- A. United States Department of Transportation
M.C. Number: _____
- B. United States Department of Transportation
USDOT Number: _____
- C. State of California
M.C. Permit Number: _____
- D. Other State Permit Number(s): _____
- E. Certification: Carrier hereby certifies that it has obtained all necessary commercial motor carrier licenses and permits from the federal and/or state governments and that such licenses and permits are currently in effect.

Carrier shall notify the Port within two (2) business days of any suspension or revocation of its federal or state operating authority.

III. Truck Registration and Certification:

- A. Registration: Carrier agrees to enter into the Drayage Truck Registry all required information for each truck it dispatches to provide drayage services at the Port.
- B. Identification: Carrier agrees to equip each such drayage truck with an RFID tag or other technological identification method provided by the Port or its designated representative.
- C. Certification: Carrier hereby acknowledges that it is responsible to dispatch to the Port for the purpose of providing drayage services only trucks that comply with all federal, state, and Port environmental, security, and safety regulations, and certifies that it shall not dispatch any truck that it knows or in the exercise of due diligence should know does not so comply. Carrier acknowledges that the Port has the right to deny access to the Port to any drayage truck that has not been registered, lacks proper identification devices, or does not meet applicable environmental, security, or safety regulations.

IV. Driver Registration and Certification:

- A. Registration: Carrier agrees to enter into the Drayage Truck Registry all required information for each driver of a truck it dispatches to provide drayage services at the Port.
- B. Driver Licensing: Carrier acknowledges that it is responsible for dispatching to the Port for the purpose of providing drayage services only drivers that possess a valid commercial drivers license and valid Transportation Worker Identification Card (TWIC), and certifies that it shall not dispatch any driver that it knows or in the exercise of due diligence should know does not have such a license or TWIC. Carrier further certifies that it will maintain all information concerning such drivers as required by federal and state regulations, including the dates of expiration of each driver's commercial driver license and TWIC.
- C. Driver Compliance: Carrier acknowledges that it is responsible, as provided by federal law and regulations, for the compliance of all drivers it dispatches to the Port with state and federal safety, and security regulations. Carrier further acknowledges that the Port has the right to deny access to the Port to any driver that has not been properly registered, who is found to lack an appropriate license, or who is determined to not be in compliance with any state or federal safety or security law.

V. Certification of Motor Carrier Safety Compliance

- A. Inspection Information:
Date of Last Biennial Inspection of Terminals (BIT): _____
Date of Last Request for BIT Inspection: _____
Date of Last BIT Waiver Certification: _____
- B. Inspection Certification: Carrier hereby certifies that it complies with all federal and state inspection requirements. Carrier agrees, no more than once per year, to make available upon request to Port officials all federal and state safety-related records, including vehicle inspection records, carrier inspection reports, and findings by the Federal Motor Carrier Safety Administration (FMCSA) and/or by the California Highway Patrol and other information appropriate to show Carrier's compliance with state and federal safety regulations. Carrier further agrees to maintain or display a current sticker or other credential required by federal or state law demonstrating that each truck dispatched to the Port for the purposes of providing drayage services has undergone and passed a timely safety inspection.
- C. Inspection Authorization: Carrier acknowledges and agrees that its trucks and drivers dispatched to provide drayage services at the Port may be inspected for safety-compliance purposes while on Port property.
- D. Carrier shall notify the Port within two (2) business days of any change in its USDOT safety rating to a final "unsatisfactory" status.

VI. Certification of Motor Carrier Insurance Coverage

- A. Insurance Certification: Carrier certifies that it has obtained and will maintain motor vehicle liability insurance at not less than the limits prescribed by federal regulations and that such insurance shall be procured from an insurance carrier rated A- or VII in Best's Insurance Guide or comparable rating from a comparable rating agency.
- B. Insurance Oversight: Carrier agrees to permit access by the Ports to information entered by Carrier in the Intermodal Association of North America regarding Carrier's insurance coverage. Carrier acknowledges and agrees that a truck or driver may be denied access to the Port if Carrier does not maintain currently valid required insurance for such truck or driver.

VII. Certification of Compliance With Security Regulation

- A. Carrier hereby acknowledges that it is responsible to remain in full compliance with all federal, state, municipal, and Port security laws and regulations pertaining to the provision of drayage services at the Port, and certifies to the best of its knowledge that it so complies. Carrier acknowledges that any truck or driver dispatched by Carrier to the Port may be denied access to the Port if not in compliance with such laws and regulations, including the USA Patriot Act of 2001, Maritime Transportation Security Act of 2002, and Department of Homeland Security regulations.
- B. Inspection Authorization: Carrier acknowledges and agrees that its trucks and drivers dispatched to provide drayage services at the Port may be inspected for security-compliance purposes while on Port property.

VIII. Certification of Compliance With Environmental Regulation

- A. Carrier hereby acknowledges that it is responsible to remain in full compliance with all federal, state, municipal, and Port environmental regulations pertaining to the provision of drayage services at the Port, including but not limited to Port of Long Beach Tariff Number 4 and its implementation of the Clean Truck Program restrictions on truck emissions, and certifies to the best of its knowledge that it so complies. Carrier acknowledges that any truck that is not in compliance with such Tariff and regulations may be denied access to the Port.
- B. Inspection Authorization: Carrier acknowledges and agrees that its trucks and drivers dispatched to provide drayage services at the Port may be inspected for environmental-compliance purposes while on Port property.

IX. Registration and Annual Fees

Carrier shall pay a one-time \$250 registration fee for the processing of this Registration Form, and a \$100 per-truck annual fee, to be used to cover the reasonable administrative costs of the Registration program.

X. Suspension of Registration; Notice and Opportunity to Cure

- A. Carrier acknowledges and agrees that its Registration with the Port of Long Beach may be suspended upon the occurrence of any of the following:
 - 1. Carrier's federal and state operating authority is revoked or suspended, provided that at such time as Carrier obtains such operating authority, Carrier may submit a new Registration to the Port; or,

2. Carrier is determined, in an adjudicatory proceeding before the Port's Director of Trade Relations and Port Operations, to have knowingly supplied false information to the Drayage Truck Registry, provided that the period of such suspension shall take into consideration evidence concerning the causes, nature, extent, and impact of such conduct, but in any event shall not exceed 30 days or, in the case of a pattern of repeated knowing and intentional conduct, shall not exceed one (1) year.

B. Carrier acknowledges that the Port has the right to seek suspension of Carrier's federal and/or state operating authority for the commission of an act or series of acts, or for any omission or series of omissions, that it believes justifies such a suspension.

C. Prior to any such suspension under paragraph X.A, or to any request for suspension under paragraph X.B, the Port agrees to provide Carrier with written notice of the grounds for the proposed suspension and to provide Carrier with a reasonable time of not less than 30 days to cure the defect underlying the proposed suspension.

XI. Confidentiality

The Port hereby acknowledges and agrees that all information provided by Carrier in this Registration and Agreement, and to the Driver Truck Registry, and any records pertaining to the performance of drayage services at the Port of Long Beach by Carrier, shall be maintained by the Port as confidential to the extent permitted by the California Public Records Act. This paragraph shall not prevent the Port from complying with a legal requirement to disclose such information as determined by the Office of the City Attorney, from disclosing data concerning drayage services at the Port in an aggregated form that preserves the anonymity of the Carrier and its drivers, or from providing such data to another truck or driver registry maintained by a governmental entity in the State of California, such as that maintained by the California Air Resources Board.

XII. Integration

This document constitutes the entire Registration and Agreement, and supersedes any and all Concession Agreement(s) related to the provision of drayage services by Carrier at the Port.. It may not be amended, waived, or extended, in whole or in part, except in a writing signed by both parties.

XIII. Severability

Should any part of this Registration and Agreement be determined by a court or agency of competent jurisdiction to be unenforceable, unlawful, invalid, or subject to an order of temporary or permanent injunction from enforcement, such determination shall

only apply to the specific provision, and the remainder of this Registration and Agreement shall continue in full force and effect.

XIV. Governing Law and Venue

This Registration and Agreement shall be governed by and construed in accordance with applicable federal laws and regulations, and the laws of the State of California, without reference to the conflicts of law, rules, and principles of such State. The parties agree that all actions or proceedings arising in connection with this Registration and Agreement shall be tried and litigated exclusively in the State or Federal courts located in the County of Los Angeles, State of California, in the judicial district required by court rules.

XV. Program Administrator

The Port may designate administrative agents to administer the Clean Trucks Program and this Registration and Agreement.

I, the undersigned, hereby affirm, upon penalty of perjury under the laws of the state of California, that I have the authority to execute this Registration and Agreement on behalf of the Carrier, and that the information supplied in this Registration Form is true and correct to the best of my present knowledge.

_____, 2009 By: _____
Name: _____
Title: _____

_____, 2009 By: _____
Name: _____
Title: _____

THIS REGISTRATION AND AGREEMENT MUST BE SIGNED BY TWO OFFICERS OF A CORPORATION, TWO PARTNERS OF A PARTNERSHIP OR THE OWNER OF A SOLE PROPRIETORSHIP.

ALL SIGNATURES MUST BE NOTARIZED.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of _____ } _____

On _____ before me, _____
Date Here Insert Name and Title of the Officer

personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp Above

Signature: _____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

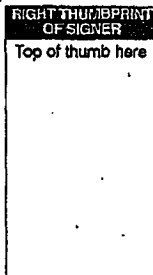
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

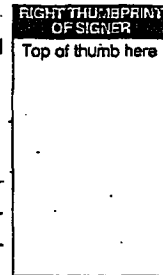
Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____

- Corporate Officer — Title(s): _____
- Individual
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



- Corporate Officer — Title(s): _____
- Individual
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____





Signer Is Representing: _____

Signer Is Representing: _____

Supplemental Agreement in Settlement

In conjunction with the settlement between plaintiff American Trucking Associations, Inc. ("ATA") and The City of Long Beach, The Harbor Department of the City of Long Beach, and The Board of Harbor Commissioners of The City of Long Beach ("Long Beach") of *American Trucking Associations, Inc. v. The City of Los Angeles, et al.*, Case No. CV 08-04920 CAS (CTx) (C.D. Cal.) (the "Action"), ATA agrees that upon dismissal of the Action with prejudice ATA shall not seek further discovery from Long Beach; provided, however, that should any current or former employee of Long Beach be listed as a potential witness by or on behalf of any other party to the Action, Long Beach agrees that ATA has the right to depose such individual(s) regardless of the expiration of any deadline for discovery or other Order entered by the Court, and that Long Beach shall not object to the taking of such deposition(s); and, further provided that each party shall bear its own costs and attorney fees associated with such deposition(s).


Robert Shannon, City Attorney
Dominic Holzhaus, Principal Deputy
City of Long Beach


Robert Digges, Chief Counsel
American Trucking Associations, Inc.

Dated: October 19, 2009

Dated: October 19, 2009

Attachment #2

NRDC et al Appeal Letter dated Nov. 16, 2009

NATURAL RESOURCES DEFENSE COUNCIL
COALITION FOR A SAFE ENVIRONMENT
COMMUNITIES FOR CLEAN PORTS
GREATER LONG BEACH INTERFAITH COMMUNITY ORGANIZATION
LOS ANGELES ALLIANCE FOR A NEW ECONOMY
LONG BEACH COALITION FOR A SAFE ENVIRONMENT
SAN PEDRO DEMOCRATIC CLUB
STUDENTS UNITED FOR JUSTICE, CALIFORNIA STATE UNIVERSITY LONG BEACH

November 16, 2009

Mr. Larry Herrera
Long Beach City Clerk
333 W. Ocean Blvd., Lobby Level
Long Beach, CA 90802

Members of the Long Beach City Council
City Hall Office
Civic Center Plaza
333 West Ocean Blvd., 14th Floor
Long Beach, California 90802

Via Personal Messenger Service

Re: Appeal of City of Long Beach Harbor Department Environmental Determination
Pursuant to Long Beach Municipal Code Title 21, Division V, Section 21.21.507

Dear Long Beach City Clerk Herrera and Members of the Long Beach City Council:

On behalf of the undersigned organizations, this letter is written pursuant to Long Beach Municipal Code Title 21, Division V, Section 21.21.507, and consists of an appeal of the following two environmental determinations made by the Port of Long Beach Board of Harbor Commissioners (the "Board"):

- (1) The Board's determination or lack thereof that the settlement agreement entered into by the Board, City of Long Beach, and the Harbor Department of the City of Long Beach with the American Trucking Associations, Inc. ("ATA") to resolve *ATA v. City of Los Angeles et al.* ("*ATA v. Los Angeles*") is not subject to the California Environmental Quality Act ("CEQA"); and
- (2) The Board's determination on November 2, 2009 that its resolution to amend HD-1357, designated Tariff No. 4, for a period of 90 days (the "Resolution") is exempt from CEQA.

GROUNDS FOR APPEAL

I. FACTUAL BACKGROUND

A. ATA's Legal Challenge to The Port of Long Beach's Clean Trucks Program

The Port of Long Beach ("POLB") and Port of Los Angeles, through their respective Boards adopted Clean Trucks Programs ("CTP") to modernize the port drayage truck fleet, and provide the ports with greater oversight over port trucking operations. The CTP is comprised of three components: (1) a progressive truck ban that phases out older, dirtier trucks from port service over five years; (2) a fee assessed on cargo containers moved by truck that will be used to help subsidize the purchase of newer, cleaner trucks that comply with the progressive truck ban; and (3) concession agreements that require any trucking company dispatching trucks hauling cargo to or from the ports to become a concessionaire and adhere to obligations outlined within the concession agreement. The ports adopted their respective CTPs in full by the Spring of 2008.

In July, 2008, ATA sued the Cities and Ports of Long Beach and Los Angeles claiming that the concession agreement component of both ports' respective CTPs was preempted by the Federal Aviation Administration Authorization Act ("FAAAA") and in violation of the Commerce Clause of the U.S. Constitution. Los Angeles and Long Beach argued in response that the concession agreements are a valid exercise of the ports' authority as landlords and necessary to ensure that licensed motor carriers ("LMCs") meet critical environmental, safety and security standards that further the ports' business objectives. The ports also argued that the concession agreements fall within the motor vehicle safety exception to the FAAAA.

Throughout the litigation, and in the federal district court and Ninth Circuit Court of Appeals, Long Beach maintained, up until the Board settled with ATA, that its concession agreement allowed the port to hold an identifiable, financially-responsible entity accountable for compliance with the CTP, and that the concession model produced environmental benefits. For example, Long Beach maintained that:

If this Court were to enjoin the concession contracts now, the environmental benefits achieved thus far would be undermined, and any future environmental benefits would be placed on hold. As the Ports have shown, the concession contracts play a key enforcement role in the scheme of the CTP. Without the concession contracts, the safety and environmental goals of the CTP will be compromised, and the public interest will be significantly undermined.

Brief for Defendants-Appellees Harbor Dep't of the City of Long Beach, Board of Harbor Commissioners of the City of Long Beach, et al. at 50, *ATA v. Los Angeles*, Case No. 08-56503 (9th Cir. 2008) (attached as Ex. 1). Accordingly, the Board, in its own words, has acknowledged the importance of the concession agreements in achieving and securing the POLB's environmental, safety, and security objectives.

B. The Board's Settlement With ATA.

On October 19, 2009, the Board entered into a settlement agreement with ATA.¹ Under the settlement, LMCs will not be required to have a concession to perform trucking services at POLB. Instead, LMCs are required to "register" with POLB prior to conducting port drayage services and enter into a "registration agreement."² Long Beach's settlement and registration agreement are attached hereto as Exhibits 2 and 3.

For the purpose of this appeal, several facts are relevant regarding the contents of the settlement and registration agreements. First, POLB's registration agreement removes LMC accountability for the environmental, safety and security standards set by the port. Under the registration agreement, LMCs must "certify" and "acknowledge" that they will only dispatch trucks that meet the port's environmental, safety and security standards.³ However, POLB has little ability to hold the LMC accountable for those promises. For instance, POLB can only suspend LMC access to the port if the LMC's operating authority is revoked or suspended, or if the LMC knowingly provides false data in the Drayage Truck Registry.⁴ Further, the suspension for providing false data is limited to 30 days or one year in the case of repeated knowing and intentional conduct.⁵ As a result, POLB cannot deny an LMC port access even if the LMC commits large scale or repeated violations of federal, state, municipal or port environmental, safety or security provisions—unless the LMC's motor carrier license is revoked by federal or state authorities. Under the concession agreement, POLB had the authority to condition LMC access to the port based on compliance with POLB's environmental, safety and security standards.⁶

Second, under the settlement, any attempt by the port or City to require LMCs to meet more stringent environmental, safety or security requirements than those set out in the registration agreement would be a breach of the settlement agreement and authorize ATA to reinstate its lawsuit against Long Beach.⁷ For instance, if the current Board or a future Board required LMCs to create vehicle maintenance plans to ensure sophisticated diesel particulate filters are well-maintained and functioning properly, POLB would likely be in breach of the settlement. This restriction ties the City's hands to address current and future environmental threats. Under the

¹ Los Angeles has not settled with ATA, and a trial in that case is scheduled for March 2010.

² Stipulation of Settlement and Joint Motion for Voluntary Dismissal with Prejudice between Plaintiff ATA and Long Beach Defendants ("Settlement Agreement"), *ATA v. City of Los Angeles et al.* ("*ATA v. Los Angeles*"), Case No. 08-04920, ¶¶ 2-3 (Oct. 19, 2003) (attached as Ex. 2); Motor Carrier Registration and Agreement ("Registration Agreement") (attached as Ex. 3).

³ Registration Agreement, §§ III(C), VIII(A).

⁴ *Id.* § X(A).

⁵ *Id.* § X(A)(2).

⁶ Drayage Services Concession Agreement for Access to the Port of Long Beach ("Concession Agreement"), Schedule 4 – Default and Termination (attached as Ex. 4). The effect of the registration agreement is that the port is left enforcing its environmental, safety and security standards on individual trucks, that is, policing nearly 20,000 port trucks before they enter terminal gates. The benefit of the concession agreement was that it placed strong incentives onto financially responsible trucking companies to meet the port's environmental standards.

⁷ Settlement Agreement, §§ 4, 5(b).

concession model, the concession agreement was for a term of five years thereby enabling POLB to update the concession's requirements if necessary.⁸

Third, the registration agreement omits many of the provisions that were in the concession agreement to secure the long term environmental benefits of the CTP. For instance, the registration agreement:

- **Fails to Include Maintenance Requirements:** Unlike the concession agreement, the registration agreement does not require LMCs to prepare environmental maintenance plans or allow the port to inspect any maintenance records.⁹ It is well-documented that port trucks often go into disrepair because drivers cannot afford to properly maintain their trucks, let alone purchase new, cleaner models. Given that the registration agreement provides no incentive for LMCs to financially support or assist drivers with maintenance or provide any requirements that proper maintenance occurs, there is great concern that the environmental benefits achieved by the POLB's truck bans will be short lived. Under the concession agreement, POLB required LMCs to "prepare an appropriate maintenance plan" and "be responsible for vehicle condition and safety and shall ensure that the maintenance of all Permitted Trucks, including retrofit equipment, is conducted in accordance with manufacturer specifications."¹⁰
- **Fails to Include Financial Capability Requirements:** The registration agreement does not require LMCs to meet minimum financial capability requirements or employ their drivers. Any LMC that certifies that it will comply with the registration agreement and pay a one-time \$250 registration fee and \$100 per truck annual fee can perform port drayage operations at Long Beach.¹¹ Absent financial requirements, there is no guarantee that trucks will be well-maintained or that those performing port drayage will have the capital to purchase newer, cleaner trucks as they become commercially available. As a result, the drayage system will have to rely on perpetual government subsidies and taxpayer dollars to clean up future fleets.¹² Under the concession agreement, LMCs were required to meet minimum financial capability requirements to ensure that financially responsible companies performed port drayage services.¹³

⁸ Concession Agreement, § II.

⁹ Compare Concession Agreement, § III(g), with Registration Agreement § V(B) (Registration Agreement allows the port to inspect safety records only, and only once per year).

¹⁰ Concession Agreement, § III(g) (also requiring LMCs to make maintenance records available to the port for inspection).

¹¹ Registration Agreement, § IX.

¹² Los Angeles, Long Beach, the South Coast Air Quality Management District, as well as California taxpayers through Proposition 1B have contributed tens of millions of dollars to pay for the initial turnover of the port's dirty truck fleet. It was envisioned, however, that this would be a one time investment; that funds would be given to financially responsible trucking companies that could shoulder the future costs associated with purchasing and maintaining new trucks.

¹³ Concession Agreement, § III(o) (requiring LMCs to "demonstrate . . . that they possess the financial capability to perform their obligations").

- Strips Port Oversight Over LMCs: The registration agreement only authorizes POLB to inspect, and no more than once a year, the safety records of motor carriers.¹⁴ POLB has no authority to independently verify any non-safety related data motor carriers provide to the port, making the chance of discovering that a motor carrier has knowingly provided false information to the port remote at best. (As discussed above, POLB can limit LMC access to the port in very few cases, including when LMCs knowingly provide fraudulent information to the port). In contrast, under the concession agreement, POLB could inspect the concessionaire's offices, property, files or records in order to verify whether the concessionaire has complied with the concession agreement.¹⁵
- Fails to Protect Local Neighborhoods From Safety Hazards Created by Trucking Operations: The registration agreement does not require motor carriers to comply with any truck routes or parking restrictions as a condition of obtaining port entry. As a result, POLB's model removes an important mechanism to ensure trucking operations comply with local ordinances. In fact, POLB is precluded under the registration agreement from taking any corrective action against motor carriers who fail to comply with, e.g., local and state truck routes. Port trucks create not only public health impacts but safety concerns for local residential neighborhoods where trucks regularly park and traverse local roads. Such trucks could be extra-wide, over-height, and/or carrying hazardous materials. Under the concession agreement, POLB required LMCs to submit "a parking plan that includes off-street or lawful on-street parking locations" for drayage trucks, and required LMCs to ensure that all of its trucks "remain in compliance with the parking plan and all state and local laws and Port tariffs regarding: (1) parking and stopping; and (2) truck routes and permit requirements for hazardous materials, extra-wide, over-height and overweight loads."¹⁶ The concession agreement also required LMCs to post placards on all trucks while on port property that refer members of the public to a phone number to report safety, security or emissions concerns.¹⁷

Further, unlike the concession agreement, Long Beach cannot take remedial action against an LMC if the LMC lacks liability insurance for a substantial number of its fleet. The most Long Beach can do is report the problem to a state or federal licensing authority, request that the LMC's motor carrier permit be revoked, and deny access on an individual truck basis upon proof that each individual truck does not have insurance.¹⁸ The registration agreement also does not require the LMC to report accidents involving bodily injury or property damage valued in excess of \$500. In contrast, under the concession agreement POLB required such reporting.¹⁹

¹⁴ Registration Agreement, § V(B).

¹⁵ Concession Agreement, Schedule 2 – Concession Fees, Reporting and Audits, § 2.3.

¹⁶ Concession Agreement, § III(f).

¹⁷ *Id.* § III(m).

¹⁸ Registration Agreement, § VI(B).

¹⁹ Concession Agreement, Schedule 3 – Indemnification and Insurance, § 3.9.

The Board entered into the settlement agreement in closed session, and to date has not made any CEQA findings in relation to the settlement agreement.

C. The Board's Resolution Implementing the Settlement.

On November 2, 2009, the Board adopted a Resolution to begin implementing its obligations under its settlement agreement with ATA. Essentially, the resolution sought to align POLB's CTP with the settlement agreement. Specifically, the Resolution amends HD-1357, designated Tariff No. 4, ("Tariff No. 4), for a period of 90 days. Tariff No. 4, among other things, defines the circumstances under which terminal operators can permit drayage trucks to access port terminals. The Resolution amends Tariff 4 by providing that drayage trucks can access port terminals if they are registered under a "registration agreement." (Before the amendment, access was only granted to trucks that were registered under a concession). The Resolution and related staff report is attached hereto as Exhibit 5.

The Resolution also encompassed a finding that the amendments to Tariff 4

are exempt from CEQA under California Public Resource Code Section 21084, Title 14 of the California Code of Regulations, Section 15273 (rates, tolls, fares, and charges), Section 15301(d)(restoration or rehabilitation of mechanical equipment) and Section 15061(b)(3)(no possibility of significant adverse effect on the environment).²⁰

Neither the staff report nor the resolution included any explanation of how these exemptions apply.

II. THE BOARD VIOLATED CEQA BY FAILING TO SUBJECT THE SETTLEMENT AGREEMENT TO ANY CEQA REVIEW.

There is no evidence that the Board considered whether CEQA applies to the settlement agreement itself—specifically, whether the Board's abandonment of the environmental provisions in its concession agreement required a CEQA analysis.

Government actions trigger CEQA when they cause "either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." Cal. Pub. Res. Code § 21065; CEQA Guidelines § 15378. Further, under CEQA, a full environmental impact report ("EIR") is required where substantial evidence supports a "fair argument" that significant impacts "may" occur—even if other substantial evidence supports the opposite conclusion. *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75; *Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1000–03. The "fair argument" standard imposes a "low threshold" for requiring the preparation of an EIR. *Citizen Action to Serve All*

²⁰ A Resolution of the Board of Harbor Commissioners of the City of Long Beach Amending Ordinance No. HD-1357, Designated Tariff No. 4, By Amending Section 10 for a Period of Ninety Days ("Resolution"), ¶ 15 (attached as Ex. 5).

Students v. Thornley (1990) 222 Cal.App.3d 748, 754. Such a standard “reflect[s] a preference for requiring an EIR to be prepared.” *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 332. Under the “fair argument” standard, deference to the agency’s determination is not appropriate, and its decision not to require an EIR may be upheld only if there is *no* credible evidence to the contrary. *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1317–18.

Here, the settlement agreement triggers CEQA compliance. The settlement is a “project” as defined by statute. It consists of “an activity directly undertaken by a public agency” that “may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” Cal. Pub. Res. Code § 21065; CEQA Guidelines § 15378.

Indeed, the port’s testimony and court-briefs filed in the federal courts foreclose any attempt by the Board to argue that significant environmental impacts will not occur by abandoning the concession agreement. As noted, POLB vigorously argued in its court filings that without the concession agreement, “the environmental benefits achieved thus far would be undermined, and any future environmental benefits would be placed on hold.” Brief for Defendants-Appellees Harbor Dep’t of the City of Long Beach, Board of Harbor Commissioners of the City of Long Beach, et al. at 50, *ATA v. Los Angeles*, Case No. 08-56503 (9th Cir. 2008). POLB went on to state that “without the concession contracts, the safety and environmental goals of the CTP will be compromised, and the public interest will be significantly undermined.” *Id.*

Further, the Managing Director of Environmental Affairs and Planning for POLB testified in the federal district court, through a signed declaration, that the port’s EIR for the Middle Harbor Project²¹

includes and reflects the estimated emissions reductions that are projected to arise from the [Clean Air Action Plan] and CTP. If those initiatives are prevented or substantially delayed from becoming effective, then the EIR cannot be relied on for approval and permitting of the project. Accordingly, the redevelopment project itself will not be approvable, and the redevelopment and air quality improvements proposed through the project will not go forward. This issue is not unique to the Middle Harbor Project. Without a fully functioning CAAP and CTP, I do not believe the Port can finalize an approvable EIR for any major terminal redevelopment or expansion project.

Declaration of Robert G. Kanter in Support of Defendants’ Opposition to Plaintiff’s Motion for Preliminary Injunction, *ATA v. Los Angeles*, Case No. 08-04920, ¶¶ 15–16 (Aug. 20, 2008) (attached hereto as part of Ex. 1). Given POLB’s admitted reliance on the CTP to achieve air pollution reductions in connection with future port expansion, it is surprising that the port would not conduct any CEQA analysis to determine if its settlement with ATA threatened POLB’s projected emissions reductions.

²¹ The Middle Harbor Redevelopment Project is a massive 345-acre container terminal project that at full build out will handle over 3 million twenty-foot-equivalent (TEU) containers per year. Middle Harbor Development Project Q&A, available at <http://www.polb.com/civica/filebank/blobload.asp?BlobID=5143>.

Additionally, Executive Director of the Port Richard D. Steinke testified to the federal district court, through a signed declaration, about the importance of the maintenance provisions within the concession agreement. Mr. Steinke underscored that the concession agreement required LMCs to create maintenance plans for all of their trucks, “to ensure and promote road safety” and “to ensure that emissions-reducing systems on new and retrofitted trucks are operating effectively.” Declaration of Richard D. Steinke in Support of Defendants’ Opposition to Plaintiff’s Motion for Preliminary Injunction, *ATA v. Los Angeles*, Case No. 08-04920, ¶ 20 (Aug. 20, 2008) (attached hereto as part of Ex. 1). Again, POLB’s own testimony demonstrates that emissions benefits were to be gained by provisions in the concession agreement—provisions that are *not* within the registration model.

Moreover, even if the port’s admission of the environmental benefits of the concession agreement were not enough, a comparison of the concession and registration agreement makes clear that an EIR is required. As described above, the registration agreement fails to include key provisions that existed in the concession agreement that resulted in environmental benefits, including enforcement provisions, maintenance requirements, financial capability requirements, insurance requirements, and auditing provisions.²² While the Board may argue that the registration agreement provides adequate safeguards to ensure that the emissions benefits projected in the Clean Air Action Plan and CTP will be achieved, the grim reality is that the registration agreement is substantially different from the concession agreement, and no environmental analysis was performed to determine the environmental impacts from those differences. Moreover, as stated, the settlement agreement includes provisions that restrict POLB’s ability to impose new environmental standards on LMCs.²³ These provisions were not subject to any CEQA analysis either.

Accordingly, the port’s settlement agreement, which restricts the City’s ability to impose restrictions on LMCs in the future and nullified key environmental provisions in the concession agreement “may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” Cal. Pub. Res. Code § 21065; CEQA Guidelines § 15378. Further, substantial evidence exists to support a fair argument that significant impacts may occur from the Board’s abandonment of the concession agreement, thus requiring an EIS.²⁴

²² Concession Agreement, §§ III(g), (o), Schedule 2 – Concession Fees, Reporting and Audits, Schedule 3 – Indemnification and Insurance, Schedule 4 – Default and Termination.

²³ Settlement Agreement, §§ 4, 5(b).

²⁴ While the Board adopted findings that the Resolution was exempt from CEQA, these findings are inapplicable to the settlement agreement. The Resolution makes clear that the CEQA exemptions apply to the “amendments” to Tariff 4 that were authorized by the Resolution, not the settlement agreement. *See* Resolution, ¶ 15. Moreover, as discussed below, the claimed exemptions do not provide a basis for the port to avoid CEQA compliance in any event.

III. THE BOARD VIOLATED CEQA BY DETERMINING THAT THE RESOLUTION WAS EXEMPT FROM CEQA.

As stated above, in adopting the Resolution, the port claimed three CEQA exemptions: CEQA Guidelines Section 15273 (rates, tolls, fares, and charges), Section 15301(d) (restoration or rehabilitation of mechanical equipment), and Section 15061(b)(3) (no possibility of significant adverse effect on the environment).²⁵ As discussed below, none of these exemptions are applicable.²⁶

A. The Exemption for Rates, Tolls, Fares, and Charges is Inapplicable.

CEQA Guidelines section 15273 provides:

(a) CEQA does not apply to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, and other charges by public agencies which the public agency finds are for the purpose of:

(1) Meeting operating expenses, including employee wage rates and fringe benefits,

(2) Purchasing or leasing supplies, equipment, or materials,

(3) Meeting financial reserve needs and requirements,

(4) Obtaining funds for capital projects, necessary to maintain service within existing service areas, or

(5) Obtaining funds necessary to maintain such intra-city transfers as are authorized by city charter.

(b) Rate increases to fund capital projects for the expansion of a system remain subject to CEQA. The agency granting the rate increase shall act either as the lead agency if no other agency has prepared environmental documents for the capital project or as a responsible agency if another agency has already complied with CEQA as the lead agency.

(c) The public agency shall incorporate written findings in the record of any proceeding in which an exemption under this section is claimed setting forth with specificity the basis for the claim of exemption.

²⁵ Resolution, ¶ 15.

²⁶ The Resolution also found that the amendments to Tariff 4 were exempt from CEQA under California Public Resources Code Section 21084. However, section 21084 merely provides that the CEQA Guidelines shall "include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall be exempt" from CEQA; this provision of the statute does not provide a particular exemption.

Case law demonstrates that this exemption has been applied when an agency changes or imposes a fee for a service or product that it provides, such as bus rides or parking at state beaches. *Bus Riders Union v. L.A. County Metropolitan Transp. Agency*, 2009 WL 3338104 (Oct. 19, 2009); *Surfrider Found. v. Cal. Coastal Comm'n*, (1994) 26 Cal.App.4th 151. The Board cannot rely on this exemption to avoid analyzing the environmental impacts associated with amending Tariff 4 for three reasons.

First, subsection (c) of the claimed exemption required the port, as a condition of claiming the exemption, to “incorporate written findings in the record of any proceeding in which an exemption under this section is claimed setting forth with specificity the basis for the claim of exemption.” At no time did the Board provide any written findings explaining the basis for the claimed exemption, let alone findings that provided a rationale with “specificity.”

Second, given the limited scope of the exemption, it defies logic to argue that amending Tariff 4 to allow trucks to access the port if they are registered under a registration agreement consists of the “establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, and charges.” CEQA Guidelines § 15273.

Third, even if the Board could argue that a portion of the amendments to Tariff No. 4 are covered by this exemption, that would not relieve the Board from performing a CEQA analysis for the remainder of the amendments—specifically, whether amending Tariff No. 4 to relieve LMC compliance with a host of provisions under the concession agreement results in adverse environmental effects.

B. The Exemption For Restoration or Rehabilitation of Mechanical Equipment Is Inapplicable.

CEQA Guidelines § 15301 generally exempts the restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment to meet current standards of public health and safety, and only when such efforts involve negligible or no expansion of use. Subsection (d) expressly exempts:

Restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment to meet current standards of public health and safety, unless it is determined that the damage was substantial and resulted from an environmental hazard such as earthquake, landslide, or flood . . .

This exemption does not apply for two reasons. First, even a cursory reading of this exemption makes clear that it was intended to apply to minor repairs to damaged structures, facilities or mechanical equipment. 14 CCR § 15301. Thus, it’s hard to imagine how the amendments to Tariff 4—even if one were to take a distorted view of “mechanical equipment” to include heavy duty trucks—would fall into this section.

Second, the regulation states that “[t]he key consideration is whether the project involves negligible or no expansion of an existing use.” 14 CCR § 15301. Courts have concluded that projects are outside of this exemption when the resulting environmental impact would be more than negligible, or stated differently, where the activity creates a reasonable possibility of a significant environmental effect. *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster*, (1997) 52 Cal.App.4th 1165, 1194. Here, as stated, the Resolution and accompanying amendments to Tariff 4 create a reasonable possibility of a significant environmental effect because the registration agreement is less protective of the environment than the concession agreement, as evidenced by the Boards own statements and court filings.

C. The Exemption For Projects That Create No Possibility of Significant Adverse Environmental Effects Is Inapplicable.

Under CEQA Guidelines § 15061(b)(3):

A project is exempt from CEQA if . . . [t]he activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

For reasons discussed at length in this letter, this exemption does not apply because replacing the concession agreement with the registration agreement, and amending Tariff 4 to align the settlement agreement with the CTP “may have a significant effect on the environment.” The registration agreement omits key provisions including maintenance, auditing, and financial capability and removes LMC accountability for compliance with environmental, safety, and security standards, while tying the hands of both the port and City of Long Beach from enacting new requirements on LMCs in the future. These omissions on their face, and as acknowledged by port executives, demonstrate that the exemption does not apply.

Moreover, this exemption is applicable only where the agency prepared and filed a notice of exemption, and provided factual support and a brief explanation of why this exemption applies. *See Muzzy Ranch Co. v. Solano County Airport Land Use Comm'n*, (2007) 41 Cal.4th 372; *Cal. Farm Bureau Fed'n v. Cal. Wildlife Conservation Bd.*, (2006) 143 Cal.App.4th 173, 186, 194. These requirements were not met here.²⁷

²⁷ Since no exemptions apply, even if the port could account for its unsubstantiated claims that this project will not have an adverse impact on the environment, it should have completed a negative declaration. The failure to complete a negative declaration amounts to a CEQA violation.

**EVIDENCE THAT THE GROUNDS FOR APPEAL WERE PROVIDED
TO THE BOARD**

On October 28, 2009, a number of the signatories to this letter drafted a letter to the Board to express their disappointment in the ATA/POLB settlement. Letter from NRDC, et al., to the Port of Long Beach Harbor Commissioners (Oct. 28, 2009) (attached as Ex. 6). This letter discussed how the registration agreement eroded the environmental benefits of the CTP. For instance, the signatories to that letter urged that:

This ATA-approved trucking plan erodes the Port's ability to enforce environmental, security, and safety measures in the harbor area. The Port's surrender of its traditional police powers and its ability to protect residents of Long Beach from harmful truck impacts leaves us little confidence in the Port's ability to ensure a sustainable trucking system—a system which is a foundation for Port expansion.

Id. at 2.

The letter went on to argue that the settlement agreement:

unacceptably delegates the City Council's and the Port's decision-making power to address impacts from harbor trucking to industry lobbyists. The veto power that ATA now has under this arrangement will seriously undermine current and future efforts to control harmful impacts from port trucking.

Id. Additionally, the letter underscored the potential illegality of the settlement agreement, and specifically asserted that the agreement likely violated CEQA, and called into question the air quality benefits claimed by the Middle Harbor project. *Id.*

Additionally, on November 2, 2009, representatives from the Natural Resources Defense Council, LAANE, Communities for Clean Ports, and Students United for Justice from California State University Long Beach testified before the Board and raised similar concerns.

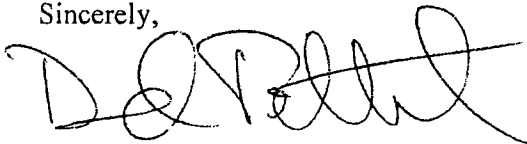
CONCLUSION

We acknowledge that many of the signatories of this appeal favored the Port of Los Angeles concession agreement over that of Long Beach. However, we acknowledge that the concession agreements adopted by both ports generated environmental benefits for harbor-area communities. In fact, NRDC intervened in ATA's lawsuit against the ports to defend *both* ports' programs. Accordingly, we were extremely disappointed to learn that Long Beach had abandoned its concession model in its settlement with ATA, and even further dismayed when such actions were taken behind closed doors and without proper CEQA compliance.

Accordingly, consistent with the authority granted to the City Council under Long Beach Municipal Code Title 21, Division V, Section 21.21.507(J), and for the reasons discussed herein, we ask that you grant this appeal and set aside the environmental determination, or lack thereof in the case of the settlement agreement, of the Board. Further, in accordance with Section 21.21.507(F), we remind the City that this appeal "will stay the effect of: (1) the environmental determination; (2) any project approval made pursuant to the environmental determination; and (3) any notice of determination; until the city council renders a decision on the appeal."

Thank you for your consideration.

Sincerely,



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Appeal of Environmental Determination
November 16, 2009
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cc: City of Long Beach Mayor Foster
Port of Long Beach Board of Harbor Commissioners

Enclosures:

- Exhibit 1: Brief for Defendants-Appellees Harbor Dep't of the City of Long Beach, Board of Harbor Commissioners of the City of Long Beach, et al., *ATA v. Los Angeles*, Case No. 08-56503 (9th Cir. 2008)
- Declaration of Robert G. Kanter in Support of Defendants' Opposition to Plaintiff's Motion for Preliminary Injunction, *ATA v. Los Angeles*, Case No. 08-04920 (Aug. 20, 2008)
- Declaration of Richard D. Steinke in Support of Defendants' Opposition to Plaintiff's Motion for Preliminary Injunction, *ATA v. Los Angeles*, Case No. 08-04920 (Aug. 20, 2008)
- Exhibit 2: Stipulation of Settlement and Joint Motion for Voluntary Dismissal with Prejudice between Plaintiff ATA and Long Beach Defendants ("Settlement Agreement"), *ATA v. Los Angeles*, Case No. 08-04920 (Oct. 19, 2003)
- Exhibit 3: Motor Carrier Registration and Agreement ("Registration Agreement")
- Exhibit 4: Drayage Services Concession Agreement for Access to the Port of Long Beach ("Concession Agreement")
- Exhibit 5: Memorandum from Donald B. Snyder, Director of Trade Relations, to Board of Harbor Commissioners (Nov. 2, 2009) (re: Clean Truck Program Tariff Amendments to include Registration agreements), including A Resolution of the Board of Harbor Commissioners of the City of Long Beach Amending Ordinance No. HD-1357, Designated Tariff No. 4, By Amending Section 10 for a Period of Ninety Days ("Resolution")
- Exhibit 6: Letter from NRDC, et al. to the Port of Long Beach Harbor Commissioners (Oct. 28, 2009)



Attachment #3

City Attorney response to NRDC Appeal letter dated Nov. 20, 2009



OFFICE OF THE CITY ATTORNEY
Long Beach, California

ROBERT E. SHANNON
City Attorney

HEATHER A. MAHOOD
Chief Assistant City Attorney

MICHAEL J. MAIS
Assistant City Attorney

November 20, 2009

David Pettit
Director, Southern California Air Program
Natural Resources Defense Council
1314 Second Street
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RE: **November 16, 2009 Appeal Under Municipal Code Section 21.21.507**

Dear Mr. Pettit:

As you know, the Board of Harbor Commissioners approved the Stipulation of Settlement (the "ATA Settlement") with the American Trucking Associations ("ATA") on October 19, 2009. The Federal District Court signed the Order of Voluntary Dismissal ("Court Order") on October 20 and the Court Order was entered on October 21.

The Court Order states that "[h]aving considered the Stipulation of Settlement, the Court finds that the Motion [for voluntary dismissal with prejudice] should be granted." The Court retained "exclusive jurisdiction and venue to enforce the terms of the Stipulation of Settlement" which provides as follows:

"Within fifteen (15) business days following entry of the Order on this stipulation for dismissal, the Long Beach Defendants shall make available at the Port, on its internet website, and by electronic mail to all motor carriers that have executed a Concession Agreement with the Port of Long Beach, the Registration [] Agreement to all licensed motor carriers wishing to provide drayage services at the Port of Long Beach.

The Long Beach Defendants agree that the filing by a carrier of a signed and complete Registration [] Agreement becomes effective as of the day of filing and supersedes any Concession Agreement an individual carrier may previously have executed with the Port." (emphasis added)

In order to give effect to the registration agreements as mandated by the Court Order, the Board adopted a resolution on November 2, 2009 ("Resolution") to allow access to the port by trucks dispatched under a registration agreement. On November 16, the Board approved first reading of an ordinance to the same effect ("Ordinance"). Significantly, registration agreements have already been filed with the Port by licensed motor carriers pursuant to the ATA Settlement.

PRINCIPAL DEPUTIES

Barbara D. de Jong
Dominic Holzhaus
Belinda R. Mayer
J. Charles Parkin

DEPUTIES

C. Geoffrey Allrec
Gary J. Anderson
Richard F. Anthony
Amy R. Burton
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Randall C. Fudge
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Anne C. Lattin
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Barbara J. McTigue
Barry M. Meyer
Cristyl Meyer
Howard D. Russel
Tiffani L. Shin
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David Pettit
November 20, 2009
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On November 16, the NRDC and others filed an appeal under Municipal Code Section 21.21.507 regarding the Board's approval of (1) the ATA settlement, and (2) the Resolution, asserting that the Board did not comply with the California Environmental Quality Act in connection with the approvals ("the Appeal"). During the Board's consideration of the Ordinance on November 16, you also commented that you would file a similar appeal if the Ordinance is approved.

The Appeal is hereby rejected for the following reasons. First, the Appeal conflicts with the express terms of the Court Order in which the Federal District Court retains exclusive jurisdiction and venue. The Supreme Court has consistently held that the Supremacy Clause of the United States Constitution renders invalid any state or local authority in conflict with a federal court order. *See, for example, United States v. American Telephone and Telegraph Company*, 552 F. Supp. 131 (D.C. D.C. 1982), *aff'd* 460 U.S. 1001 (1983).

In addition, the Appeal is untimely. Municipal Code Section 21.21.507 requires that an appeal must be filed within ten business days. The Board approved the ATA Settlement on October 19. The ATA Settlement and the Court Order encompass the Resolution and the Ordinance which are necessary for implementation of the Court Order. The Appeal was not filed until November 16 -- more than ten business days later.

Finally, were you to file an appeal of the Ordinance, that appeal would be rejected for the same reasons.

Very truly yours,



ROBERT E. SHANNON,
City Attorney

RES:DTH:kdh
A09-03119

cc: Mayor and Members of the City Council
Port of Long Beach Board of Harbor Commissioners
Patrick West, City Manager
Suzanne Frick, Assistant City Manager
Distribution (see attached)

DISTRIBUTION LIST

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Los Angeles Alliance for a New Economy
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Los Angeles, CA 90017

David Greene, President
San Pedro Democratic Club
1536 W. 25th St., #214
San Pedro, CA 90732

Attachment #4

Board of Harbor Commission Nov 2, 2009 Resolution HD-2538.



Memorandum

Date: November 2, 2009
To: Board of Harbor Commissioners
From: Donald B. Snyder, Director of Trade Relations *DBS*
Subject: **Clean Truck Program Tariff Amendments to include Registration Agreements**

Requested Action

Recommend that the Board of Harbor Commissioners adopt the Ordinance and Resolution to amend Section 10 - Clean Trucks Program (CTP) in accordance with the settlement agreement with the American Trucking Association (ATA) to allow access to Port property under a registration Agreement. (See attached draft tariff pages with new language highlighted in bold lettering.)

Background

On November 20, 2006, the Board of Harbor Commissioners adopted the Clean Air Action Plan (CAAP). In the CAAP the Port recognized that our ability to accommodate projected growth in international trade will depend on our ability to address adverse environmental impacts, and in particular, air quality impacts, that result from such trade. The CTP is a landmark program that has successfully reduced air emissions and health risks by modernizing the ports trucking fleet and by 2012 will slash air pollution by 80 percent.

Description of Current Issues

The Port has worked closely with licensed motor carriers, independent truck owner-operators, truck manufacturers and dealers, financing entities and maintenance facilities to ensure success of the Clean Truck Program. The Port remained flexible, balanced competing interests and policy objectives, and amended Section 10 – CTP repeatedly to reflect these lessons learned and mid-course optimizations. In particular, the Board and the ATA have worked to resolve litigation by ATA regarding the form of agreement between the Port and trucking companies for access to Port terminals. In settlement of the litigation, the Port has agreed to allow trucking companies to replace Concession Agreements with a Registration Agreement.

As one of the Port's most ambitious environmental initiatives, the program is already cutting truck-related pollution significantly. After only one year in operation the program has led to the introduction of nearly 5,000 low-emission trucks serving the Port. More than half of all the cargo moved in and out of the Port is now carried by trucks that meet 2007 federal emission standards. The use of a Registration Agreement will allow the Port and the trucking industry to move forward and reach the goal of achieving the reduction of truck air pollution while maintaining a safe and secure Harbor District. The Registration Agreement will ensure that we continue to verify that only clean trucks that meet our tough standards are entering our shipping terminals.

Financial Impact

This action is not expected to result in any financial impact to the Port.

Recommendation

Therefore, we recommend that the Board of Harbor Commissioners adopt the Ordinance and Resolution to amend Port of Long Beach Tariff No. 4, Section 10 – Clean Trucks Program, Items 1000 & 1040, with effective date November 3, 2009, in accordance with the settlement agreement with the ATA to allow access to Port property under a Registration Agreement.

Recommended by:



Alex Cherin
Managing Director, Trade Relations & Port Operations

Approved by:



Richard D. Steinke *For*
Executive Director

Attachments: Ordinance, Resolution, Draft & Current Tariff Pages

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 RESOLUTION NO. HD-

2
3 A RESOLUTION OF THE BOARD OF HARBOR
4 COMMISSIONERS OF THE CITY OF LONG BEACH
5 AMENDING ORDINANCE NO. HD-1357, DESIGNATED
6 TARIFF NO. 4, BY AMENDING SECTION 10 FOR A
7 PERIOD OF NINETY DAYS
8

9 1. On December 27, 1983, the Board of Harbor Commissioners of the
10 City of Long Beach adopted Ordinance No. HD-1357, designated Tariff No. 4, which sets
11 forth rates at which, and terms under which, the Port of Long Beach, California is willing
12 to provide marine terminal and related services. Tariff No. 4 has been amended from
13 time to time since 1983. The current version of Tariff No. 4 is made available to the
14 public on the Port of Long Beach website at polb.com; and

15 2. On November 12, 2007, the Board adopted Ordinance No. HD-1997,
16 which added Section 10 to Tariff No. 4, relating to the San Pedro Bay Ports Clean Air
17 Action Plan drayage truck measures. On January 7, 2008, the Board adopted Ordinance
18 No. HD-2005, which amended these drayage truck measures, and added a Clean Truck
19 Fee to fund in part the cost of replacing older drayage trucks. These drayage truck
20 measures were further amended on February 25, 2008 by Ordinance No. HD-2009, on
21 March 17, 2008 by Ordinance No. HD-2011, on August 18, 2008 by Ordinance No.
22 HD-2028, on September 15, 2008 by Ordinance No. HD-2033, on November 10, 2008 by
23 Ordinance No. HD-2034, on May 4, 2009 by Ordinance No. HD-2044, and on
24 August 24, 2009 by Ordinance No. HD-2053.

25 3. The Board now desires to further amend Ordinance No. HD-1357 by
26 amending Section 10 for a period of ninety (90) days commencing immediately, as set
27 forth in this resolution.

28 4. The San Pedro Bay Ports Clean Air Action Plan (CAAP) was

1 adopted by the Boards of Harbor Commissioners of Long Beach and Los Angeles on
2 November 20, 2006. The Ports of Los Angeles and Long Beach are located side-by-side
3 in San Pedro Bay. In the CAAP, the two ports recognized that their ability to
4 accommodate projected growth in international trade will depend on their ability to
5 address adverse environmental impacts, and in particular, air quality impacts, that result
6 from such trade. The CAAP was designed, in collaboration with the Federal
7 Environmental Protection Agency (U.S. EPA), the California Air Resources Board
8 (CARB) and the South Coast Air Quality Management District (SCAQMD), "to develop
9 mitigation measures and incentive programs necessary to reduce air emissions and
10 health risks while allowing port development to continue." CAAP, p. 2.

11 FINDINGS

12 1. As part of the overall implementation of the CAAP, the Long Beach
13 Harbor Department ("Port of Long Beach" or "Port"), in conjunction with the Port of Los
14 Angeles, has considered numerous proposals to address air pollution from a variety of
15 sources operating within the Harbor District of the City of Long Beach. This process has
16 included public meetings, contacts with private and governmental parties at the local,
17 state and federal level, and review of written submissions and suggestions. This
18 resolution reflects close consideration of all of these views.

19 2. The Port holds legal title to and manages the lands on which it is
20 located as a trustee for the benefit of the People of California. The Port manages the
21 land and tidal water resources associated with the trust under the Long Beach Tidelands
22 Trust (California Constitution Article X; California Public Resources Code Sec. 6306;
23 Long Beach City Charter, Article XII, and Chapter 676, Statutes of 1911, as amended)
24 and the California Coastal Act (California Public Resources Code Div. 20, Sec. 30700 et.
25 seq.), which identify the lands, waters and facilities as a primary economic and coastal
26 resource of the State of California and an essential element of the national maritime
27 industry for promotion of commerce, navigation, fisheries and harbor operations. As
28 trustee, the Port also has a duty to mitigate the environmental impacts of activities on

1 Port property and to preserve the ecology, including the water, land and surrounding air.

2 3. The Port is one of the largest providers of marine terminal facilities in
3 the United States. The Port is proprietor of facilities that handle over 20% of the nation's
4 containerized goods: cargo valued at more than \$100 billion per annum. Together with
5 the Port of Los Angeles, the San Pedro Bay ports handle over 40% of the nation's
6 containerized goods worth more than \$200 billion per annum. Failure to take prompt,
7 reasonable, and effective measures to reduce harmful air emissions generated by
8 Port-related activities will prevent the efficient expansion and development of port
9 facilities necessary to meet the increasing demands of the nation's international maritime
10 commerce.

11 4. Tens of thousands of individuals work in Port-related jobs, as
12 employees of the Port and employees of businesses involved in moving, handling and
13 shipping maritime cargo, spending many hours every day on the roads and rail lines in
14 the port vicinity. As an employer and as a landlord, the Port has an interest in adopting
15 reasonable measures to assure an efficient, safe and healthy workplace.

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17 and global ports for international maritime commerce business. Just as business
18 customers and users of the Port's facilities who are leaders in corporate social
19 responsibility and sustainable practices seek modern, environmentally-friendly and
20 sustainable port services, the Port has an interest in adopting reasonable measures to
21 upgrade the infrastructure and to reduce harmful air emissions from Port-related goods
22 movement operations.

23 6. As neighbor to millions of Californians, the Port has an interest in
24 adopting reasonable measures to assure that Port operations do not injure the health and
25 property of nearby residents. In addition, because the Port requires the support of
26 residents in nearby communities for needed improvements in Port infrastructure, failure
27 to significantly reduce the health and traffic impacts of Port operations on these
28 communities will impede the Port's ability to handle increased volumes of goods in future.

1 7. Studies by SCAQMD and CARB have concluded that the more than
2 two million people who live near the Ports of Los Angeles and Long Beach face greater
3 health risks than those who live elsewhere in the region. Implementation of infrastructure
4 projects, in conjunction with the other components of the CAAP, would contribute to the
5 reduction in premature deaths and health costs in the region.

6 8. The South Coast Air Basin has the highest concentrations of
7 atmospheric ozone and certain criteria pollutants in the entire United States. In the
8 CAAP, the Ports of Los Angeles and Long Beach have committed to reduce pollutant
9 emissions to the levels that will assure that port-related sources make their fair share of
10 regional emission reductions to enable the South Coast Air Basin to attain state and
11 federal ambient air quality standards. CAAP, p. 24.

12 9. If the South Coast Air Basin fails to comply with ambient air quality
13 standards by federal Clean Air Act deadlines, the Port and other regional entities may be
14 unable to obtain federal funding for future growth. If the Basin remains out of compliance
15 beyond these deadlines, billions of dollars of federal funding for regional infrastructure
16 improvements could be lost under federal conformity policies.

17 10. Independently, the failure of the Port to adequately address air
18 pollution impacts and infrastructure capacity would threaten future Port growth both
19 because of legal constraints under the California Environmental Quality Act (CEQA) and
20 the National Environmental Policy Act and the opposition of surrounding residents and
21 communities to further expansion without an actual improvement in environmental
22 conditions surrounding the ports. For example, CEQA requires implementation of all
23 feasible mitigation measures before any project with significant environmental impacts is
24 approved.

25 11. Although the Port has unique trust responsibilities, the Port is not
26 unique among large property owners or employers in recognizing the benefits of reducing
27 pollution from its facilities, in enhancing the local infrastructure and the environment,
28 promoting employment and living as good neighbors with its surrounding communities.

1 Reasonable environmental measures are simply good business practices.

2 12. The Port has worked closely with licensed motor carriers,
3 independent truck owner-operators, truck manufacturers and dealers, financing entities
4 and maintenance facilities to ensure success of the Clean Truck Program. The Port
5 remained flexible, balanced competing interests and policy objectives, and amended
6 Section 10 repeatedly to reflect these lessons learned and mid-course optimizations.

7 13. In particular, the Board and the American Trucking Association
8 (ATA) have worked to resolve litigation by ATA regarding the form of agreement between
9 the Port and trucking companies for access to Port terminals. In settlement of the
10 litigation, the Port has agreed to allow trucking companies to replace concession
11 agreements with a registration agreement.

12 14. The Board now wishes to conform the tariff to the settlement to allow
13 access to Port terminals under a registration agreement.

14 15. The Director of Environmental Planning has determined that these
15 amendments are exempt from CEQA under California Public Resource Code
16 Section 21084, Title 14 of the California Code of Regulations, Section 15273 (rates, tolls,
17 fares, and charges), Section 15301(d)(restoration or rehabilitation of mechanical
18 equipment) and Section 15061(b)(3)(no possibility of significant adverse effect on the
19 environment).

20 NOW, THEREFORE, the Board of Harbor Commissioners ordains:

21 Section 1. The Board hereby finds and determines that amendment to
22 Section 10 to Ordinance No. HD-1357 is categorically exempt from the provisions of the
23 California Environmental Act.

24 Sec. 2. Based on the findings set forth above, Ordinance No. HD-1357,
25 adopted by the Board of Harbor Commissioners of the City of Long Beach on
26 December 27, 1983, is further amended for a period of ninety (90) days as set forth in
27 Exhibit "A" attached hereto and by this reference made a part hereof. The amended
28 items shall be effective immediately.

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

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Sec. 3. This resolution shall take effect immediately upon its adoption by the Board of Harbor Commissioners, and the Secretary of the Board shall certify to the vote adopting this resolution and shall cause a certified copy of this resolution to be filed forthwith with the City Clerk. The City Clerk shall post the resolution in three conspicuous places in the City of Long Beach.

I hereby certify that the foregoing resolution was adopted by the Board of Harbor Commissioners of the City of Long Beach at its meeting of _____, 2009 by the following vote:

Ayes: Commissioners: _____

Noes: Commissioners: _____
Absent Commissioners: _____
Not Voting: Commissioners: _____

Secretary

DTH:rjr 10/2809 #A09-03354
L:\Apps\CityLaw32\WPDocs\DO20\PO11\00184031.DOC

Exhibit "A"

PORT OF LONG BEACH TARIFF NO. 4	F.M.C. NO. 004	ORIG/REV	PAGE
		8	162
NAMING: Rates, Rules and Regulations Governing the Port of Long Beach, California		CANCELS	PAGE
		7	162
		EFFECTIVE DATE	
		November 3, 2009	
		CORR. NO.	
RULES AND REGULATIONS			
RULE=34.j SECTION 10 - CLEAN AIR ACTION PLAN			
TABLE:			
EFFECTIVE DATE: 11/03/09		EXPIRATION DATE:	AMENDMENT: C
			SPECIAL CASE:
<p>ITEM: 1000</p> <p>TERM: Drayage Trucks - Definitions (Cont'd)</p> <p>"Diesel-Fueled" means a compression-ignition engine fueled by Diesel Fuel, CARB Diesel Fuel, or jet fuel, in whole or part, including liquid natural gas engines using diesel-fuel for pilot ignition.</p> <p>"Diesel Particulate Matter" or "PM" means the particles emitted in the exhaust of Diesel-Fueled compression-ignition engines.</p> <p>"Drayage Truck" means any in-use On-Road Vehicle with a Gross Vehicle Weight Rating greater than 33,000 pounds operating on property owned by the Port of Long Beach for the purpose of loading, unloading or transporting cargo, including containerized, bulk, break-bulk and neo-bulk goods. Drayage Truck does not include Dedicated Use Vehicles, Authorized Emergency Vehicles, Military Tactical Support Vehicles, Yard Trucks, or trucks delivering goods manufactured on Port Property.</p> <p>"Drayage Truck Registry" or "DTR" is a database that contains information on trucks that conduct business on Port Property at the Ports of Los Angeles and Long Beach, including: Owner's name, address, phone numbers, email address, and fax number; Dispatching Licensed Motor Carrier(s); Concession number(s), or Registration Agreement number(s), or Day Pass number(s); Drayage Truck and engine make, model, model year, and fuel source; Vehicle identification number (VIN), license number and state of issuance; VDECS equipment</p> <p>"Early Replacement Drayage Trucks" means 2007 Drayage Trucks which are replacing older Drayage Trucks and are (i) funded by Program Funds under grant applications which are approved by the Ports of Los Angeles and Long Beach prior to October 1, 2008, or (ii) privately funded without Program Funds under binding purchase and sales agreements entered into prior to October 1, 2008.</p> <p>"Gateway Cities Trucks" are Drayage Trucks purchased or retrofitted using funds provided to Gateway Cities by the Port of Long Beach or the Port of Los Angeles.</p>			
FOR EXPLANATION OF ABBREVIATIONS AND REFERENCE MARKS, SEE RULE NO. 34.15			

DPI (510) 635-7202

XXXX/XX

Exhibit "A"

PORT OF LONG BEACH TARIFF NO. 4	F.M.C. NO. 004	ORIG/REV	PAGE
		8	165
NAMING: Rates, Rules and Regulations Governing the Port of Long Beach, California		CANCELS	PAGE
		7	165
		EFFECTIVE DATE	
		November 3, 2009	
		CORR. NO.	
RULES AND REGULATIONS			
RULE=34.j SECTION 10 - CLEAN AIR ACTION PLAN TABLE: EFFECTIVE DATE: 11/03/09 EXPIRATION DATE: AMENDMENT: C SPECIAL CASE:			
ITEM: 1000 TERM: Drayage Trucks - Definitions (Cont'd) <p>"Registration Agreement" means a written agreement between The Port of Long Beach and a Licensed Motor Carrier to allow drayage service on Port Property.</p> <p>"Terminal" is any facility on Port Property used for the transfer of cargo from one mode to another, including container terminals, break-bulk terminals, dry bulk terminals and railyards.</p> <p>"Terminal Operator" is the entity with contractual authority from the Port of Long Beach to operate a Terminal.</p> <p>"Radio Frequency Identification Device" or "RFID" is an electronic device with a unique identification number, installed on a Drayage Truck which will enable the Terminal Operator to access the Drayage Truck's records in the DTR.</p> <p>"Vehicle" is as defined in Vehicle Code Section 670.</p> <p>"Verified Diesel Emission Control Strategy" or "VDECS" is an emission control strategy that has been verified pursuant to the "Verification Procedure, Warranty and In-Use Compliance Requirements for In-Use Strategies to Control Emissions from Diesel Engines" in Title 13, California Code of Regulations, commencing with Section 2700, and incorporated by this reference.</p> <p>"Yard Truck" means an off-road mobile utility vehicle used to carry cargo containers with or without chassis; also known as utility tractor rig (UTR), yard tractor, yard goat, yard hostler, or prime mover.</p> <p>"2007 Drayage Truck" is a Drayage Truck that is equipped with an engine that meets or exceeds 2007 model year California or federal heavy-duty Diesel-Fueled On-Road emission standards.</p>			
FOR EXPLANATION OF ABBREVIATIONS AND REFERENCE MARKS, SEE RULE NO. 34.15			

DPI (510) 635-7202

XXXX/XX

Exhibit "A"

PORT OF LONG BEACH TARIFF NO. 4	F.M.C. NO. 004	ORIG/REV 1	PAGE 166.12
NAMING: Rates, Rules and Regulations Governing the Port of Long Beach, California		CANCELS PAGE	PAGE 166.12
		Original	166.12
		EFFECTIVE DATE	
		November 3, 2009	
RULES AND REGULATIONS		CORR. NO.	
RULE=34.j SECTION 10 - CLEAN AIR ACTION PLAN TABLE: EFFECTIVE DATE: 11/03/09 EXPIRATION DATE: AMENDMENT: C SPECIAL CASE:			
<p> ITEM: 1035 TERM: Clean Truck Fund The first Terminal Operator to handle containerized merchandise subject to the Clean Truck Fee shall collect and remit the Clean Truck Fee to the Port of Long Beach, and the monies shall be used by the Board of Harbor Commissioners exclusively for replacement and retrofit of Drayage Trucks serving the Ports of Los Angeles and Long Beach. </p> <p> ITEM: 1040 TERM: Concessions, Registration Agreements and Day Passes Beginning October 1, 2008, at 8:00 a.m., no Terminal Operator shall permit access into any Terminal in the Port of Long Beach to any Drayage Truck unless such Drayage Truck is registered in the DTR under a Concession, a Registration Agreement, or a Day Pass. Copies of the Port of Long Beach Concession Agreement and Application, Registration Agreement, and Day Pass Terms and Conditions are posted on the Port website at www.polb.com. The application fee for a Registration Agreement shall be \$250, and the annual fee for a Concession Agreement or a Registration Agreement shall be \$100 per Drayage Truck (collectively "Registration Fees"). The fee for a Day Pass shall be \$30 per Day Pass plus the cost of an RFID or other required identification device ("Day Pass Fee"). Registration Fees and Day Pass Fees shall be paid by the Licensed Motor Carrier applying for or holding the Registration Agreement, Concession Agreement or Day Pass. </p>			
FOR EXPLANATION OF ABBREVIATIONS AND REFERENCE MARKS, SEE RULE NO. 34.15			

DPI (510) 635-7202

XXXX/XX

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
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ORDINANCE NO. HD-

AN ORDINANCE OF THE BOARD OF HARBOR
COMMISSIONERS OF THE CITY OF LONG BEACH
AMENDING ORDINANCE NO. HD-1357, DESIGNATED
TARIFF NO. 4, BY AMENDING SECTION 10

1. On December 27, 1983, the Board of Harbor Commissioners of the City of Long Beach adopted Ordinance No. HD-1357, designated Tariff No. 4, which sets forth rates at which, and terms under which, the Port of Long Beach, California is willing to provide marine terminal and related services. Tariff No. 4 has been amended from time to time since 1983. The current version of Tariff No. 4 is made available to the public on the Port of Long Beach website at polb.com.

2. On November 12, 2007, the Board adopted Ordinance No. HD-1997, which added Section 10 to Tariff No. 4, relating to the San Pedro Bay Ports Clean Air Action Plan drayage truck measures. On January 7, 2008, the Board adopted Ordinance No. HD-2005, which amended these drayage truck measures, and added a Clean Truck Fee to fund in part the cost of replacing older drayage trucks. These drayage truck measures were further amended on February 25, 2008 by Ordinance No. HD-2009, on March 17, 2008 by Ordinance No. HD-2011, on August 18, 2008 by Ordinance No. HD-2028, on September 15, 2008 by Ordinance No. HD-2033, on November 10, 2008 by Ordinance No. HD-2034, on May 4, 2009 by Ordinance No. HD-2044 and on August 24, 2009 by Ordinance No. HD-2053.

3. The San Pedro Bay Ports Clean Air Action Plan (CAAP) was adopted by the Boards of Harbor Commissioners of Long Beach and Los Angeles on November 20, 2006. The Ports of Los Angeles and Long Beach are located side-by-side in San Pedro Bay. In the CAAP, the two ports recognized that their ability to accommodate projected growth in international trade will depend on their ability to

1 address adverse environmental impacts, and in particular, air quality impacts, that result
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3 Environmental Protection Agency (U.S. EPA), the California Air Resources Board
4 (CARB) and the South Coast Air Quality Management District (SCAQMD), "to develop
5 mitigation measures and incentive programs necessary to reduce air emissions and
6 health risks while allowing port development to continue." CAAP, p. 2.

7 FINDINGS

8 1. As part of the overall implementation of the CAAP, the Long Beach
9 Harbor Department ("Port of Long Beach" or "Port"), in conjunction with the Port of Los
10 Angeles, has considered numerous proposals to address air pollution from a variety of
11 sources operating within the Harbor District of the City of Long Beach. This process has
12 included public meetings, contacts with private and governmental parties at the local,
13 state and federal level, and review of written submissions and suggestions. This
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15 2. The Port holds legal title to and manages the lands on which it is
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18 Trust (California Constitution Article X; California Public Resources Code Sec. 6306;
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22 resource of the State of California and an essential element of the national maritime
23 industry for promotion of commerce, navigation, fisheries and harbor operations. As
24 trustee, the Port also has a duty to mitigate the environmental impacts of activities on
25 Port property and to preserve the ecology, including the water, land and surrounding air.

26 3. The Port is one of the largest providers of marine terminal facilities in
27 the United States. The Port is proprietor of facilities that handle over 20% of the nation's
28 containerized goods: cargo valued at more than \$100 billion per annum. Together with

1 the Port of Los Angeles, the San Pedro Bay ports handle over 40% of the nation's
2 containerized goods worth more than \$200 billion per annum. Failure to take prompt,
3 reasonable, and effective measures to reduce harmful air emissions generated by
4 Port-related activities will prevent the efficient expansion and development of port
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6 commerce.

7 4. Tens of thousands of individuals work in Port-related jobs, as
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25 Reasonable environmental measures are simply good business practices.

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1 remained flexible, balanced competing interests and policy objectives, and amended
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3 See paragraph 2, above.

4 13. In particular, the Board and the American Trucking Association
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7 litigation, the Port has agreed to allow trucking companies to replace concession
8 agreements with a registration agreement.

9 14. The Board now wishes to conform the tariff to the settlement to allow
10 access to Port terminals under a registration agreement.

11 15. The Director of Environmental Planning has determined that these
12 amendments are exempt from CEQA under California Public Resource Code
13 Section 21084, Title 14 of the California Code of Regulations, Section 15273 (rates, tolls,
14 fares, and charges), Section 15301(d) (restoration or rehabilitation of mechanical
15 equipment) and Section 15061(b)(3) (no possibility of significant adverse effect on the
16 environment).

17 NOW, THEREFORE, the Board of Harbor Commissioners ordains:

18 Section 1. The Board of Harbor Commissioners of the City of Long Beach
19 hereby adopts the findings set forth above and finds and determines that the following
20 additions to Ordinance No. HD-1357 are exempt from CEQA.

21 Sec. 2. Based on the findings set forth above, Ordinance No. HD-1357,
22 adopted by the Board of Harbor Commissioners of the City of Long Beach on
23 December 27, 1983, is further amended as set forth in Exhibit "A" attached hereto and by
24 this reference made a part hereof. The amended items shall be effective as of the
25 effective date of this ordinance.

26 Sec. 3. This ordinance shall be signed by the President or Vice President
27 of the Board of Harbor Commissioners and attested to by the Secretary. The Secretary
28 shall certify to the passage of this ordinance by the Board of Harbor Commissioners of

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 the City of Long Beach, shall cause the same to be posted in three (3) conspicuous
2 places in the City of Long Beach, and shall cause a certified copy of this ordinance to be
3 filed forthwith with the City Clerk of the City of Long Beach. This ordinance shall take
4 effect on the 31st day after its final passage.

5

6

7

ATTEST:

President

8

9

Secretary

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11

I hereby certify that the foregoing ordinance was adopted by the Board of
Harbor Commissioners of the City of Long Beach at its meeting of _____, 2009
by the following vote:

12

13

Ayes: Commissioners: _____

14

15

Noes: Commissioners: _____

16

17

Absent Commissioners: _____

18

Not Voting: Commissioners: _____

19

20

Secretary

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DTH:rjr 10/28/09 #A09-03353
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