

September 18, 2017

Port of Los Angeles  
Harbor Commissioners  
425 South Palos Verdes St.  
San Pedro, CA 90731

Port of Long Beach  
Harbor Commissioners  
4801 Airport Plaza Dr.  
Long Beach, CA, 90815

*Submitted via Email, to: caap@cleanairactionplan.org*

**Re: Comments on Draft Clean Air Action Plan 2017**

Dear Presidents Martinez and Bynum, and Members of the Commissions:

On behalf of the Teamsters Port Division and Teamsters Local 848, we offer these comments and recommendations on the 2017 Draft Clean Air Action Plan (CAAP).

The Teamsters Union is the largest union of transportation workers in the country representing 1.4 million workers overall. Teamsters Local 848 represents 500 truck drivers at six (6) different companies at the Ports of Los Angeles and Long Beach, along with 7,200 members across Southern California.

Port drivers play a critical role in the global supply chain, and are indispensable to the functioning of the Ports. Yet despite their valuable contribution to the Ports' bottom line and the regional economy, the drivers continue to be treated by their employers as indentured servants and the Ports allow this illicit underground economy to thrive. The Teamsters are committed to the value that every job at the ports can and must be a good job, and that's why for over a decade, we have stood by our long-term commitment to bring justice to port drivers. Every single driver must have the opportunity to share in the prosperity generated by the nation's largest port complex.

There is strong widespread support for port drivers being treated fairly and not being further exploited by a new Clean Truck Program. Over the past week, two thousand five hundred (2,500) people signed a petition demanding that the ports not put the burden of cleaning the air on the backs of drivers. We attach a copy of the petition along with the names and zip codes of signers as part of our comments on the CAAP.

The update of the CAAP presents a unique opportunity to bring all trucking companies doing business at the Ports into conformance with the law and thereby raise standards for all who live and work in and near the Ports. The first CAAP, issued in 2006, was a great milestone for the Ports of Los Angeles and Long Beach. We have long been supportive of the highest possible

emissions standards in order to decrease deadly toxic diesel pollution because our members and those who organize to join live in port communities and also need to breathe clean air. That is why we have fought tirelessly alongside our community and environmental partners in support of the first Clean Truck Program. Unfortunately, industry interests undermined the Clean Truck Program by weakening the policy through court challenges, and there is still much work left undone. At a time when both Los Angeles and Long Beach should be making bold strides forward, the framework proposed in the Draft CAAP is a huge step backward.

Specifically, we have serious concerns with the proposals outlined in the CAAP for the Clean Trucks Program (Section 1.1), outlined below.

The complete lack of any mention of the actual structure of the port trucking industry is striking. In particular, there are two significant and persistent structural defects in the port trucking sector that must be addressed before the ambitious zero emissions goals can be met. First, the trucking industry continues to force its business costs and risks onto drivers. These costs include expensive lease payments and maintenance costs, which has gotten passed on to drivers after the trucking industry's legal challenges weakened the original CTP policy. Second, the incredibly fragmented nature of the industry makes it imperative that the Port not simply enact, but vigorously enforce the CAAP.

These issues were front and center during the development of the first CAAP and CTP. The 2006 CAAP explicitly recognized the challenge of modernizing a heavy-duty truck fleet.<sup>1</sup> A subsequent Clean Truck Program Overview issued by the Port of Los Angeles also rightly acknowledged that the industry was “fragmented” and stated that “Today’s disjointed drayage system places the burden of inefficiency (traffic, excessive fuel consumption, wasteful idling and extra truck trips) on the truck driver. The present system does not encourage efficiency.”<sup>2</sup>

In contrast, the 2017 Draft CAAP contains an entire 12-page section on the new proposed CTP, and only mentions drivers *once*, in reference to workforce development to transition to new technologies. No mention is made as to the fact that the underlying structural problems in the industry persist; that the cost of trucks have fallen – and will continue to fall – on the backs of truck drivers. Nor is there a description of the composition of the industry.

While the omission of any description of the port trucking market structure in the Draft CAAP might suggest that the issues in 2006 have been resolved, the reality is quite the opposite. Eleven years later, the underlying issues not only persist, but have gotten even more acute.

The industry challenges to the first Clean Truck Program resulted in the implementation of a clean truck mandate stripped of any measures to ensure that industry assumed responsibility for the associated costs. As a result, the adverse conditions for drivers have become even more severe. Trucking companies – many of which received thousands in public subsidies to purchase new trucks – required drivers to sign predatory subleases under the guise of an “independent

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<sup>1</sup> Final 2006 San Pedro Bay Ports Clean Air Action Plan Overview

<sup>2</sup> The Port of Los Angeles Clean Truck Program, Program Overview and Benefits, March 24, 2008, [https://www.portoflosangeles.org/ctp/CTP\\_O&B.pdf](https://www.portoflosangeles.org/ctp/CTP_O&B.pdf)

contractor” arrangement if they wanted to keep their jobs. The companies then deducted from drivers’ pay the costs of the new clean trucks, including lease payments for the new clean trucks, insurance, diesel, parking, maintenance, repairs, truck wash, and often the cost of CTP registration and RFID devices.

This scheme has become a national scandal, casting a pall on the Ports’ prized Clean Truck Program. A two-part June 2017 investigative report published on the front page of USA Today, “Rigged: Forced into debt, Worked past exhaustion, Left with nothing.” exposed the working conditions of drivers as “modern-day indentured servitude.”<sup>3</sup> The yearlong investigation revealed that it is not uncommon for drivers to receive a *negative* paycheck at the end of a week’s work, and begin the next work week indebted to the company. Through this same system, trucking companies were also found to coerce drivers to drive far longer hours than is legally permitted, by holding the threat of retaliation, termination, and losing the equity paid into the trucks over the heads of drivers.

This employment model is not just shocking, and a national shame. It is also illegal. Unfortunately, the Ports have made no efforts to ensure that trucking companies operate their businesses in a legal fashion, complying with necessary tax, labor, and employment laws, despite provisions in their concession and registration. Over the past five years, in the absence of any action by the Ports, drivers themselves have come forward to challenge their misclassification as independent contractors. They have brought their disputed status to government regulators and courts to settle the issue. Overwhelmingly, state and federal agencies and courts have consistently found drivers to be employees – not independent contractors – upon close examination of the facts.

The California Labor Commissioner has issued over 375 decisions finding that drivers were employees and therefore protected under the California Labor Code. The total amount that these decisions have ordered trucking companies to pay their drivers is at least \$40 million. The multiple violations that the Labor Commissioner has found include illegal deductions for clean truck payments and related costs under Labor Code § 221 and IWC Wage Order No. 9, §8. Additionally, the payments that companies pass on to drivers and require them to pay out of pocket – such as fuel or insurance – must be reimbursed under California Labor Code § 2802.

Yet despite the wave of claims and decisions in favor of drivers, the dominant model in the port trucking industry by which clean trucks have been paid for and continue to be operated and maintained, has remained. Many companies have ignored final court judgments, in many cases creating new shell companies and continuing to operate at the ports. Even in cases where judgments have been satisfied or claims have been settled, many of the same companies continue to misclassify their drivers, gambling that the chances and cost of being caught again are outweighed by the savings of illegally passing their business costs on to their drivers.

Working under such illegal and exploitative conditions has led to growing unrest among drivers. To protest their misclassification and the related wage theft, drivers whose employers classify them as “independent contractors” have been exercising their rights as employees,

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<sup>3</sup>“Rigged: Forced into debt. Worked past exhaustion. Left with nothing,” Brett Murphy, USA Today. 06/16/2017.

organizing to form their Union with the Teamsters and engaging in Unfair Labor Practice strikes to lawfully protest their treatment by their employers – the trucking companies that contract with the ports.

Since 2013, drivers have carried out 15 such strikes, picketing trucks from struck companies wherever they do business – at truck and rail yards, at warehousing and distribution centers, and at Port terminals. These picket lines have caused delays, disruptions in service, and instability and uncertainty for the Ports and the many stakeholders that rely upon dependable and smooth flows of cargo.

As a result of drivers' persistent efforts challenging their misclassification at the courts, through government investigations, and on the picket lines, drivers have succeeded in transforming their employment classification at several trucking companies. The Teamsters now represent 500 drivers at six drayage companies that have reformed their models and have come into compliance with employment, tax, and labor laws, properly classifying their drivers as employees. However, these high-road companies are at a steep competitive disadvantage as long as the majority of the industry continues to misclassify its drivers.

Although the industry challenges to the first Clean Trucks Program exacerbated driver exploitation, leading to significant unrest and chaos, we wish to acknowledge that the CTP made important initial strides. One of its key achievements was creating a system where trucking companies could be held accountable. Prior to the Clean Truck Program, as noted in the original CAAP, no one even knew how many unique trucks serviced the Ports let alone how many drayage companies conducted business at the ports. The implementation of direct contractual relationships between the Ports and trucking companies helped create more order and transparency.

Building upon that foundation, we urge the Ports to improve enforcement while taking even bolder steps to fully transform the port trucking sector to benefit all stakeholders, including workers and surrounding communities.

To that end, we share the below recommendations.

### **Recommendations:**

1. **The industry – trucking companies and cargo owners – must bear the cost of clean trucks.** As described above, the illegal nature of the leasing and misclassification has been widely demonstrated and well documented, and its adverse impact on drivers has worsened. To address this crisis, and seize the opportunity presented by the CAAP update, the CTP should contain measures to ensure that trucking companies and beneficial cargo owners assume the costs of clean trucks and do not illegally pass the costs on to drivers.

**2. The CTP must include provisions to ensure that trucking companies follow the law.**

The current Port of Los Angeles CTP Concession Agreement contains provisions requiring trucking companies to comply with the law. Specifically, Section 8, Compliance, states:

*Motor Carrier and all Drayage Trucks and their Drivers dispatched by Motor Carrier to perform Drayage Services shall when entering and leaving Port Property and while on Port Property, comply with this Concession Agreement, Port of Los Angeles Tariff No. 4 and all applicable federal, state and municipal laws, statutes, ordinances, rules and regulations that govern Motor Carrier's operations, including without limitation, any laws, rules and regulations regulating motor carriers, transportation, hazardous materials, safety, security, environment, employment, traffic, zoning and land use. Motor Carrier agrees that any non-compliant Drayage Trucks and drivers shall be denied access to Port property.*

While multiple trucking companies have outstanding final court judgments resulting from unpaid Labor Commissioner awards, demonstrating noncompliance with and violations of applicable federal, state and municipal laws that govern Motor Carrier's operations, to our knowledge, no trucking companies have been penalized, suspended or banned from the Port. To our knowledge, the Port has not even pursued any of the default remedies outlined in the concession agreement, not even a warning letter.

- a. The new CTP at both Ports should contain clear provisions requiring participating trucking companies to comply with federal, state and municipal laws – including, employment, and tax laws.
- b. The new CTP agreements should also include noncompliance with such laws as one of the events of default.
- c. The CTP should require licensed motor carriers to notify the port within 15 days of actions being brought regarding violations to applicable federal, state and municipal laws.
- d. The Ports should implement policies that protect them from negative economic impacts and reputational harm caused by labor disruptions, strikes and picketing that damage the ports' ability to compete in the market for port services.
- e. The CTP Applications should continue requiring applications to disclose financial, licensing and basic operations information.

3. **Port drivers' and labor's voice must be included in a meaningful way.** Simply put, port drivers' voices were not factored in to the development of the Draft CAAP. The document states that the Ports held 50 stakeholder meetings. The Teamsters, who represent the drivers, were not invited to any such meetings, and to our knowledge, none of these meetings were held with drivers, who were the most adversely affected by the first CTP. Drivers and Teamsters representatives have repeatedly expressed our concerns about the proposed CAAP – including our frustration at being excluded from the process – in public comment at Harbor Commission meetings and the August 30 CAAP public workshop.
  - a. As the CAAP moves forward and the new CTP is developed, drivers and their representatives must have meaningful opportunities to be a part of the solution by sharing their concerns, ideas, and feedback with the Commissioners and Port staff.
4. **We Support the Smog Test for Drayage Trucks.** The Teamsters have been raising concerns for years that the lack of regular truck maintenance would result in trucks emitting more diesel pollution than regulated emissions standards resulting in trucks not actually being in compliance of the CTP emissions standards. Therefore, we strongly support the CAAP's proposal to facilitate, support, and expand upon the State's heavy-duty vehicle maintenance, repair, and inspection program currently under development. It is long overdue for the Ports to take a leadership role in inspecting trucks for safety and air emissions. It is important that this as part of the new CAAP.
5. **Transitioning to Zero emissions technology.** We support the highest possible emissions standards. We want clean air for the communities surrounding the ports and for the drivers themselves. Port drivers are among the most vulnerable to harmful emissions. Not only are they are in close proximity to the pollution at the ports and along the freight corridors during their long workdays, but many drivers live in the most affected communities.

We applaud the Mayors' June 2017 commitment to a zero emissions drayage fleet by 2035. However, we find the Draft CAAP falls short in laying out a road map to reach those goals, largely because of the unresolved structural problems of the port drayage market.

The cost to reach zero emissions is steep. The Ports' own estimated costs of turning over to a zero emissions fleet ranges from \$5.2 to \$7 billion for an electrical equipment fleet and from \$8.4 to \$11.2 billion for a fuel cell fleet.<sup>4</sup> A single fuel cell truck ranges from \$480,000 to \$640,000. Reaching zero emissions will require well-capitalized companies that are committed to making long-term investments in their fleets. As noted above, currently, the industry model is to force the costs of truck operation and any new technology onto the drivers. Such an approach is simply not sustainable and ultimately undercuts the goal of improving and maintaining air quality. Our recommendation to ensure companies pay this cost partially solves this problem, but more is needed. The Draft CAAP states that the Ports

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<sup>4</sup> "Preliminary Cost Estimates For Select 2017 Clean Air Action Plan Strategies," Port of Long Beach/Port of Los Angeles. 08/18/2017

will play an advocacy role in securing and facilitating the distribution of public subsidies, but taxpayers should not provide subsidies anywhere close to the cost of reaching zero emissions, instead only a fraction at most. Therefore, there is only one viable option which has had demonstrable success: create conditions that advantage companies that move towards zero emission, ensuring that investors will be ready, willing and able when the technology is ready.

- a. Establish a more aggressive timetable for “sun-setting” old trucks. Over the next two years, nearly 60 percent of registered trucks will become 10 years and older. Given the economics of the industry, once truck warranties expire it is highly likely that servicing these trucks and performing the maintenance required to stay in compliance with emissions standards will not be met. Therefore, trucks that are older than ten years should be sunset and banned from the ports.
- b. Any truck subsidy programs should explicitly prohibit any lease to own or similar programs such as those described in the USA Today “Rigged”.

We thank you for the opportunity to share our comments, and we hope to continue to work with you to develop a Clean Truck Program that benefits all stakeholders, including port drivers and communities. We welcome the opportunity to discuss further with Commissioners and staff.

Sincerely,

Fredrick Potter  
Director  
Teamsters Port Division

Eric Tate  
Secretary-Treasurer  
Teamsters Local 848

CC: Eric Garcetti, Mayor of the City of Los Angeles  
Mayor Garcia, Mayor of the City of Long Beach  
Randy Cammack, President, Teamsters Joint Council 42

Enclosure: CTP/Rene Flores petition and signers