



## **CLEAN TRUCK PROGRAMS AT PORTS**

### **BACKGROUND**

Several major U.S. ports in recent years have expressed concern about air quality and emissions caused by aging and/or poorly maintained trucks used in port drayage operations. There have been two main responses, the first of which is preferable to most importers, exporters and other shippers and receivers of goods moving through the ports.

First, there are ports, including the Port of Long Beach, that have successfully implemented programs under which drayage trucks have been replaced or upgraded, significantly reducing emissions. These programs have not been opposed by national shipper groups like NASSTRAC.

However, other ports, including the Port of Los Angeles, have chosen the second approach and have attempted to require port truckers to become employees of larger trucking companies, relinquishing their independent contractor status as owner-operators.

Shipper associations such as NASSTRAC, along with carrier groups like the American Trucking Associations (ATA), believe that the main purpose of the "concession" requirement, under which independent owner-operators are forced to become employees, is to facilitate driver unionization campaigns. It is plainly not necessary for improving air quality.

### **LITIGATION AND LEGISLATION**

TA was initially successful in challenging the "concession" requirement adopted by the Port of Los Angeles in court. The court found that the Port had violated the 1994 decision by Congress to deregulate intrastate truck transportation, and the doctrine of preemption of State law by Federal law. More recently, however, a trial court judge issued a decision in August that the Port of LA's concession requirement could go forward under an exception to the law deregulating intrastate trucking. ATA will appeal, and may seek a stay to preserve the status quo pending appeal.

Moreover, the Port of Los Angeles, the Teamsters and certain environmental groups are seeking to change Federal law to create an exemption from Federal preemption. On July 29, 2010, H.R. 5967, the Clean Ports Act of 2010 was introduced in the House, and has attracted 67 cosponsors, most of whom are Democrats. It is unlikely to be enacted before the end of this Congress, and may become a dead letter if Republicans regain control of one or both houses of Congress in the November elections. If Congress exempts ports from federal preemption, the ports could then require drayage truckers to become employees of motor carriers, and impose other requirements on freight transportation.

California is also prohibiting older truck reefer units (TRUs) from operating in the State, asserting the need to reduce emissions. These rules, issued by the California Air Resources Board, apply to all trucks entering the State, even if they originate elsewhere. ATA's court challenge to these rules was unsuccessful. Though the reefer rule is legally distinguishable from the port truck programs, it illustrates the kind of disruptive state initiatives that will be more frequent if federal preemption is weakened.

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## CLEAN TRUCK PROGRAMS AT PORTS, CONT.

### NASSTRAC'S POSITION

NASSTRAC, along with other members of the Clean and Sustainable Transportation Coalition, opposes the legislative change sought by the Port of Los Angeles and its allies, and has joined a number of letters on the issue to members of Congress, mayors, and state and port officials. There are two important reasons for this opposition.

First, actions by the Port of Long Beach and other ports have shown that clean air goals can be achieved without forcing drayage drivers to become employees. Some 8,000 trucks have been replaced with newer and cleaner models at the Ports of Long Beach and the Port of Los Angeles despite the fact that Long Beach never adopted a concession plan, and Los Angeles has not yet implemented such a plan.

Second, federal preemption is critical to preserving uniformity of laws and regulations governing transportation, logistics and interstate commerce. If the law is relaxed to allow Los Angeles to regulate the conditions of employment of drayage drivers and the structure of the drayage industry, other localities will adopt their own legal and regulatory requirements, and seek approval by Congress if courts reject their initiatives. The result is likely to be multiple requirements that may be inconsistent or in conflict, which carriers and shippers will have to comply with as goods move across the U.S. Federal preemption should be preserved. It helps maintain a dependable, cost-effective national transportation system and protects against the Not in My Backyard (NIMBY) syndrome.



*NASSTRAC Inc. (the National Shipper's Strategic Transportation Council) provides education, advocacy, connections and solutions to transportation, logistics and supply chain management professionals who manage freight across all modes.*

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