

Environmental Groups Sue Long Beach over Successful Truck Plan

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The same week that the Ports of Long Beach and Los Angeles were celebrating impressive reduction in air pollution from drayage trucks in their Clean Truck Program (CTP) program two years ahead of schedule, environmental groups filed litigation. The Port of Long Beach recently achieved its best air quality report card since emissions studies began in 2002. Now, more than two-thirds of the trucks calling at both ports meet the 2007 emissions standard that won't take effect until January 1, 2012. Both ports were recognized by the Environmental Protection Agency (EPA) on December 23, 2009 for their Clean Trucks Program Partnership as a winner of EPA's Environmental Justice Achievement Award. IWLA was also recognized by EPA as a partner stakeholder to the ports for their efforts in the CTP.

Despite 6,000 new compliant trucks in Long Beach, the Natural Resources Defense Council (NRDC) and the Sierra Club Los Angeles, (<http://angeles.sierraclub.org/filed>) filed a lawsuit on December 29, 2009 against the Port of Long Beach over the CTP and the October 2009 settlement with the American Trucking Associations (ATA). NRDC announced it was filing suit against the City of Long Beach to overturn a settlement with ATA that ended litigation between the Port of Long Beach and ATA over the truck concession plan. Long Beach settled the lawsuit after an appellate court declared the concession plan illegal.

David Pettit, director of NRDC's Southern California Clean Air Program, stated in an NRDC press release that "You can't cut the public out of the conversation when you're talking about the air they breathe and the health consequences they face." "This deal puts the wolf in charge of the henhouse - with a likely result of dirtier air for local communities. Industry cannot be allowed to dictate clean air efforts and rollback the Port's clean air advancements."

On January 4, 2010, PRNewswire-US Newswire. citing the NRDC and Sierra Club filing (<http://www.prnewswire.com/news-releases/backroom-deal-leaves-long-beach-truck-program-in-hands-of-polluting-industry-80641302.html>), noted that the agreement between ATA and the Long Beach Harbor Commission could illegally reverse efforts to improve air quality in communities surrounding the Port of Long Beach. "This agreement repeatedly violates the public's trust," said Pettit. "Long Beach residents deserve transparency and honesty that the Port can easily provide if it simply complies with the law and completes a basic environmental assessment on the agreement."

The NRDC and Sierra Club argue that Long Beach violated the California Environmental Quality Act (CEQA) (<http://www.aqmd.gov/ceqa/faq.html>) and their petition seeks to overturn the decision of the Port of Long Beach, claiming it violates the CEQA because the port did not study the potential health impacts of such an agreement and allow for public input. The NRDC and Sierra Club, both of which have been highly critical of Long Beach's agreement with ATA, favor the Los Angeles-style truck plan that eliminates owner operators.

The Long Beach City Attorney Bob Shannon has stated repeatedly the port did not violate any laws by agreeing to the deal without prior City Council or public input. Shannon says that because a previous concession model between Long Beach and trucking companies has been temporarily suspended by a federal appeals court, jurisdiction over the matter now rests in federal hands. "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," Shannon wrote in a November 20, 2009 letter to the City Council.

Los Angeles is still challenging the appellate court finding and the federal court is scheduled to take up the ATA vs. Port of Los Angeles challenge in March 2010. The Port of Los Angeles is seeking to determine whether it has the authority to establish a concession program and whether it can set requirements for port drayage haulers that include conversion to an employee-driver workforce.

ATA has not objected to cleaning up the port trucks, but has objected to how it is being done. In a press release of January 4, 2010, ATA argued that the lawsuit is just one more obstacle for a city and industry searching for ways to replace some 14,000 diesel trucks during the deepest recession in decades. "I don't think it will have any effect on the continuation or progress of getting clean trucks on the road in Long Beach," ATA spokesman Clayton Boyce said. "The port retains the right to turn away dirty trucks and enforce its ban. If they want to change the program down the road, we would look at that, and as long as it's legal under federal law, there would be no challenge. If the truck does not meet the requirements, the Port of Long Beach will not let it in the gate," according to Boyce. The Long Beach CTP also gives the port all of the authority it requires to ban old, polluting trucks from the harbor and enforce clean-air standards, according to Curtis Whalen, executive director of ATA's intermodal conference.

The settlement agreement between ATA and Long Beach did not change the truck bans or reduce the Port's progress in cleaning the air.

The real story is this: the NRDC is confronting the Port of Long Beach because it refused to ban owner-operators. Los Angeles supports the concession requirements, especially the employee-driver mandate, which would make it easier for unions like the Teamsters to organize harbor truck drivers

Background

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 reduction of truck pollution has come without banning small independent businesses from port trucking.

What the Suit by the Environmental Groups Omits

The suit does not mention the recent rulings from the U.S. Ninth Circuit Court of Appeals that invalidated the non-environmental components of both the Los Angeles and Long Beach truck plan.

The suit does not mention that the federal district court approved and has the jurisdiction over the settlement between Long Beach and ATA.

The suit does not mention that the California Air Resource Board has a Port Drayage Regulation that went in to effect on January 1, 2010 and the Ports of Long Beach and Los Angeles will sunset in 2012 into the statewide regulation.

The suit does not mention that there are 6,000 trucks complying with the 2007 emission standards set by EPA and another 2,000 are in process from the South Coast Air Quality District grant program. By the end of April 2010, an estimated 8,000 cleaner trucks that meet the 2007 EPA engine standards will be servicing the Port of Long Beach.

The suit does not mention that the trucking industry-supported CTP has retired older diesel trucks and reduced truck pollution by 80 percent, putting the ports' clean air programs 2 years ahead of schedule.

The suit does not mention that trucks have been replaced or retrofitted during the worst freight recession since the Great Depression.

The suit does not mention that NRDC, the mayor of Los Angeles, or the Teamsters are publically lobbying to change the Interstate Commerce Clause to take jurisdiction from the federal government and turn it over to the local port authority.