

Congress of the United States
Washington, DC 20515

January 7, 2009

Rebecca F. Dye
Commissioner
Federal Maritime Commission
800 North Capitol St, NW
Washington, DC 20573

Harold Creel, Jr
Commissioner
Federal Maritime Commission
800 North Capitol St, NW
Washington, DC 20573

Joseph E. Brennan
Commissioner
Federal Maritime Commission
800 North Capitol St, NW
Washington, DC 20573

Dear Commissioners Dye, Creel, and Brennan:

We are writing to express our opposition to recent actions taken by the Federal Maritime Commission (FMC) that were intended to prevent crucial portions of the Ports of Los Angeles and Long Beach Clean Trucks Programs from going into effect. While we respect the FMC's statutory authority to protect the shipping public from unreasonable increases in transportation cost or reductions in service, we agree with Commissioner Brennan's dissenting statement, released on October 30, 2008, which called the FMC's action a "colossal mistake". Since the program went into effect on October 1, 2008 under FMC Agreement No. 201170, there has been no evidence of any increase in transportation cost or reductions in service, let alone an "unreasonable" one.

If the FMC's efforts to enjoin aspects of Agreement No. 201170 through the lawsuit filed in U.S. District Court for the District of Columbia are successful, particularly the concession requirement that mandates that trucking companies employ their workforce instead of using independent contractors, the intricately designed Clean Trucks Program (CTP) will unravel, putting the pollution-reduction goals of the program at risk. In fact, the program's intricate use of fees and incentives, and the innovative use of a concession program to license harbor drayage companies were decisive factors in the Boston Consulting Group's (BCG) economic analysis recommending the program to the Port of LA. BCG also concluded that an employee-based system was the most likely way to properly maintain clean trucks over the long term without future public subsidies. Leading environmental groups agree, which is why the Natural Resources Defense Council, the Sierra Club and the Coalition for Clean Air have filed suit alleging that the FMC has violated environmental laws by not considering the public health and environmental damage that would result from the FMC's intervention.

The Port of LA did not develop the Clean Trucks Program in a haphazard fashion. In fact, the port went through a long deliberative process which involved multiple economic analyses, months of public testimony, and multiple stakeholder forums. We are concerned by the FMC's lack of consideration for local government agencies' work on this program, and its failure to try and resolve any issues with the Port of LA before going to court. According to an October 28, 2008 letter from the Port of LA to the FMC, the FMC never provided any feedback to the Port before filing its lawsuit. The FMC claim that the Port of LA could "surgically remove" key elements of the program without impacting the overall effectiveness of the Clean Trucks Program appears to be more of an intervention in local government policy decisions rather than an action authorized under section 6(h) of the Shipping Act of 1984 to protect against anti-competitive behaviors.

Further, unlike the very transparent and public process that the Port of LA undertook to solicit input and develop the program, the FMC took this action without ever holding a public hearing on the issue or releasing its economic analysis of the program. In fact, the FMC held the vote during a closed-door session.

The decision to seek injunctive relief under Section 6 of the Shipping Act is particularly puzzling since the portions of the program identified in the Section 6 action – the employee driver requirement and the financial incentives for clean trucks – are both included in the FMC's Order of Investigation, issued September 24, 2008, directing an investigation under Section 10 of the Shipping Act. The Order indicates that the investigation itself could last until well into 2009 and that it might be January 2010 before the Commission acts on the results of the investigation. If the agency believed that these particular provisions violated Section 6 of the Act, then why waste the parties (and taxpayers' money) on investigating whether these practices are reasonable under Section 10? Given this ongoing investigation, the timing of the FMC's action seems questionable. The FMC acted just days before the November 4, 2008 election and only a couple of weeks after the American Trucking Association's effort to enjoin the Clean Trucks Program was denied by the United States Court of Appeals for the Ninth Circuit.

The FMC's actions have national implications because the market conditions of port trucking and the resulting pollution caused by the ancient truck fleet exists at every major port in the United States. This is why the Port of Oakland, the Port of Seattle, and the Port Authority of New York & New Jersey are all currently involved in developing their own Clean Trucks Programs. It would be more productive for the FMC to play a proactive and constructive role in the development of a common solution for ports around the country, instead of persisting in a secretive process that results in more lawsuits and delays. Due to the actions of the FMC, the collection of the clean truck container fee that was to begin November 17th has been delayed for weeks by the marine terminal operators, thereby jeopardizing the program even further.

Given the closed-door nature of the FMC's actions, the denial to provide the Port of LA with any information regarding the FMC opposition to the program, and the unusual timing of the FMC's actions, we would appreciate being provided answers to the following questions:

- Why did the FMC fail to provide any feedback to the Port of LA prior to filing a lawsuit in U.S. District Court?
- What are the details of the economic analysis that formed the basis for seeking injunctive relief against the LA Clean Trucks Program under Section 6(g)?
- Did the FMC weigh the potential impact on port infrastructure projects if the port is unable to successfully implement its CTP and thereby not achieve its needed emissions reductions goals required for new infrastructure projects?
- Why did the FMC feel compelled to rush its closed-door vote when there is no time constraint on when the agency can file for injunctive relief under Section 6(h)?
- On what basis does the FMC claim to be exempt from environmental impact regulations?
- Why did the FMC target the employee driver and financial incentives requirements for investigation if it knew that it was going to seek an injunction against both these items?

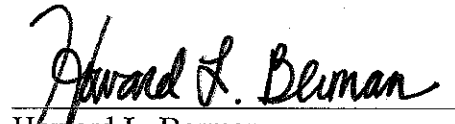
The Clean Trucks Program is a first-of-its-kind program to reduce diesel pollution from harbor drayage trucks while improving the safety and security of port trucking operations. We were disappointed that the FMC is not playing a more constructive role in ushering in a new era of port trucking operations that would reduce pollution, improve safety and security and create good trucking jobs. We look forward to receiving responses to the questions we have outlined above.


Sincerely,

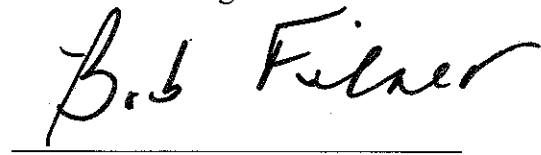

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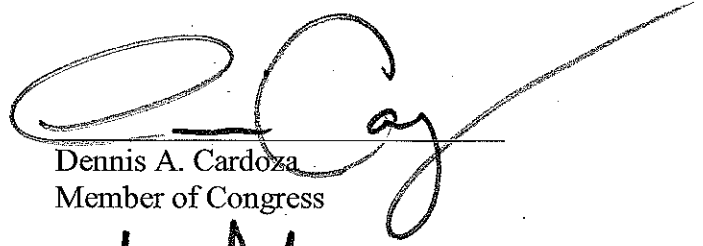
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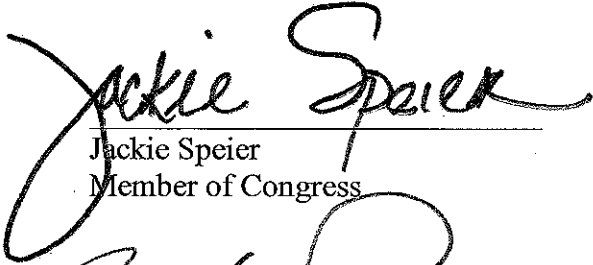
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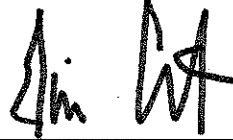
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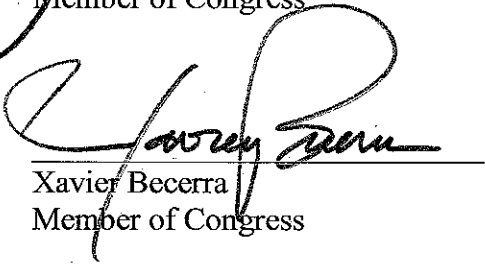
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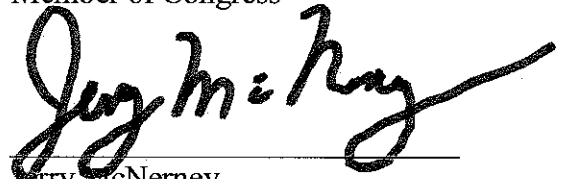
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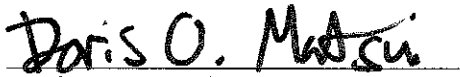
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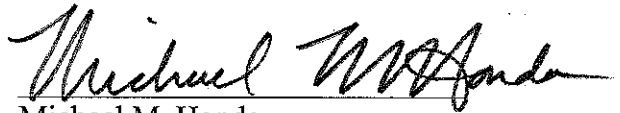
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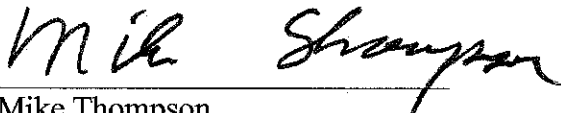
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