



Air Pollution: Port groups look to Congress for guidance as legal battle stalls

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July 24, 2009--Advocacy coalitions in major port cities on the East and West coasts are pressing Congress to give local officials clear authority to ramp up regulations to curb air pollution from old, dirty diesel trucks.

Broad coalitions of environmental, public health, labor and environmental justice groups from cities near large ports -- such as Los Angeles, Seattle and New York -- are hoping to enact new standards that would involve replacing older, dirtier trucks with newer, cleaner vehicles. But before enacting those programs, localities want assurances that they have the legal authority to do so.

Several port cities are hoping to enact efforts similar to the Los Angeles "clean trucks" program that went into effect last October. That program forced shipping companies to acquire cleaner trucks and ended the longstanding practice of hiring independent operators, who often drive older vehicles.

But the Los Angeles program is mired in a court battle between the American Trucking Associations (ATA) and the California port over whether the port has the right to bar independent owner-operators as they attempt to curtail pollution.

In March, the 9th U.S. Circuit Court of Appeals ruled in ATA's favor in calling the program unconstitutional on the grounds that it interferes with interstate commerce ([Greenwire](#), March 23). Another federal judge has since issued an injunction blocking portions of the ports' air pollution programs ([Greenwire](#), April 28).

With the fate of the Los Angeles program uncertain, groups in other cities are urging Congress to clarify that port commissions have the authority to implement similar programs.

Groups seek clarity from Congress "The Port Authority [of New York and New Jersey] has indicated that they want to move toward banning the oldest trucks," said Amy Goldsmith, chairwoman of the Coalition for Healthy Ports, which represents environmental, labor and community groups. "We want to be the trend-setter for the East Coast, and we believe that the Port Authority has the power as landlords of their property to set conditions for what happens at their port."

The Oakland, Calif., Port Commission tentatively voted in favor of a resolution Tuesday urging Congress to update its transportation policy to clearly state that ports have the authority to set and enforce trucking industry standards. The commission's executive committee is expected to approve the final resolution during a meeting Thursday.

"Our nation's ports need the tools to protect public health by holding industry accountable to a more responsible means of transporting goods," said Port Commission President Victor Uno, who introduced the

resolution. "Unless Congress brings transportation law into the 21st century, we will fail to permanently reduce toxic diesel pollutants that are contributing to serious illnesses such as asthma and cancer amongst children, port drivers and residents."

One of the legislative vehicles advocacy groups are eyeing is the upcoming highway and transit reauthorization, the multi-year spending bill that serve as the *de facto* national surface transportation policy. But exactly what legislation lawmakers will pass before the current law expires at the end of September remains in question, clouding any lobbying efforts.

House lawmakers are hoping to move a full, six-year authorization complete with a sweeping overhaul of transportation policy that focuses on curbing greenhouse gas emissions and fuel consumption. That effort, however, faces opposition from the White House and in the Senate, where lawmakers are currently on pace to pass an 18-month extension this summer to buy more time to consider the reform-minded bill.

Goldsmith stressed the importance of legal certainty for ports looking at stepping up their regulations. "We're looking for clarity by doing this so the next round in the courts the issue is addressed, so we're not moving one foot forward while the other foot is nailed to the pavement."

Banning independent truckers A key issue is whether ports have the authority to bar independent owner-operators as part of their pollution control programs, like the Los Angeles program sought to do. A recent [study](#) by Rutgers University professor David Bensman found that decades of deregulation of the port trucking industry has triggered "an environmental crisis," creating a system where many drivers are "independent contractors," who are responsible for owning and maintaining their own vehicles.

Those drivers earn an average of \$28,000 per year and often cannot afford the costly upgrades to newer, cleaner vehicles. As a result, half of all trucks driven by port drivers were manufactured in 1997 or earlier; one out of every 14 trucks was manufactured before 1990, the study found. The report was released Tuesday by Demos, a New York-based public policy research and advocacy organization.

ATA spokesman Clayton Boyce said the association opposes the ban on independent contractors, which Boyce called an attempt to mislead the public in order to allow the Teamsters union to take over trucking operations. However, the industry in general is in favor of plans that put in a graduated schedule for banning older trucks and provide financial assistance to do so, he said.

Supporters of the Los Angeles blueprint say that the ban on independent owner-operators is necessary to achieve the necessary emission cuts.

"This is about clean air and shifting the cost of goods movement ... off the communities and putting it onto those who should pay, which is the owners of that cargo," said Barbara Maynard, a Los-Angeles-based spokeswoman for the Coalition for Clean and Safe Ports, an alliance of environmental, labor, public health, faith and community organizations. The coalition is organizing in communities at the Ports of Oakland, Los Angeles, Long Beach, Seattle, and New York-New Jersey. [Click here](#) to read the study.

Reporter Josh Voorhees contributed to this story.