



NATURAL RESOURCES DEFENSE COUNCIL

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## Summary

- Economic growth at the Ports of Los Angeles and Long Beach (the “Ports”) depends on current, practical, well-financed solutions to the serious public health problem caused by Port-related diesel pollution. If those solutions are blocked, Port growth will not occur.
- Diesel pollution from the goods movement industry is estimated to cause 3,700 premature deaths in California every year, more than the number of homicides. This pollution also costs the California economy billions of dollars every year in lost work days and medical costs
- The Ports are embarking on multi-billion dollar expansion projects now. But, without solutions in place to the existing and future problems of diesel pollution, those projects will sit empty as cargo ships are forced to find other ports.
- The two largest sources of diesel pollution at the Ports are diesel trucks and oceangoing vessels. The Ports have in place plans to replace the 16,000 Port-serving trucks with clean, 2007 diesels. Carrying out these plans will cost several billion dollars, and without funding from Port-imposed container fees, the truck plans will fail. The Ports also have in place a temporary, voluntary program to incentivize the use of very low-sulfur marine fuel, in the expectation that state-wide rules from the California Air Resources Board (CARB) on low-sulfur marine fuel will go into effect in 2009.
- The trucking industry has sued to block the Ports’ clean truck plans. The shipping industry is expected to (once again) sue CARB to block the state-wide low-sulfur marine fuel rule. If either of these lawsuits is successful, port expansion and infrastructure development will stop.

## **Introduction**

Thank you for the opportunity to discuss Port development and the environment in Southern California. My name is David Pettit. I'm a Senior Attorney for the Natural Resources Defense Council (NRDC) and the Director of NRDC's Southern California Air Quality Program. NRDC is a national nonprofit organization of scientists, lawyers and environmental specialists dedicated to protecting public health and the environment. Founded in 1970, NRDC has more than 1.2 million members and online activists nationwide, served from offices in New York, Washington, Santa Monica, San Francisco, Chicago, and Beijing.

Mr. Chairman, as you may know, the Ports of Los Angeles and Long Beach are, collectively, the fifth largest port in the world, and handle roughly 40% of all imports to the United States. Business at these ports is predicted to triple within the next 20 years.

But this commercial success has come at a very high price to public health in Southern California. Our ports are already the biggest polluters in the most polluted region in the United States. The already high rates of asthma, lung cancer, cardio-respiratory and other diseases are rising sharply in communities near the ports and near the highways and railyards that serve the ports. An increase in Port business without addressing this public health problem would be unconscionable – and illegal.

NRDC has been working with the Ports for years, sometimes collaborating, sometimes litigating, in an attempt to clean up Port-related air pollution. In this testimony, I will describe how this is an important juncture for the Ports. The Ports can continue on a path of treating the skies as an open sewer by emitting harmful pollution and greenhouse gasses. Or, in the alternative, industry and other stakeholders can halt their unfettered

opposition to efforts aimed at reducing the impacts from port operations, which will allow a more sustainable and robust goods movement system to emerge. I think the latter is the far superior path, and I will lay out several policy prescriptions that will allow the ports to reduce their impacts while concurrently allowing them to prosper economically.

### **Air Pollution At The Ports Of Los Angeles And Long Beach**

The toxic air pollutant of most concern at the Ports is diesel particulate emissions from trucks, ships, trains, cargo handling equipment and tugs. The health problems associated with diesel particulate pollution are well known. Diesel exhaust is more than just gas. It also includes particulate matter (“PM”) – tiny particles of metal, carbon and other chemicals that are many times smaller than the diameter of a human hair. These particulates can be made up in part by arsenic, cadmium, nickel, inorganic lead, antimony compounds, beryllium compounds, cobalt compounds, manganese compounds, mercury compounds, phosphorus, and/or selenium compounds. In addition, diesel PM also contains volatile organic compounds (“VOCs”) and other toxic substances that are adsorbed onto the particles’ surfaces. The gaseous components of diesel exhaust are also believed to be dangerous to human health. Diesel particulates have been found to be likely human carcinogens by the U.S. Environmental Protection Agency.

As the Ports themselves have recognized in their Clean Air Action Plan<sup>1</sup>, the two biggest sources of diesel particulate emissions at the Ports are ships and trucks. In 2006, the latest year for which data are available, the Port of Los Angeles was responsible for 1,126 tons of diesel particulates, and the Port of Long Beach for 1,111. These figures show a 7

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<sup>1</sup> The San Pedro Bay Ports Clean Air Action Plan may be found at: <http://www.cleanairactionplan.org/>.

% increase over the already poisonous 2005 levels.<sup>2</sup> Every 17 tons of diesel pollution causes one premature death and significant illness. There is no recognized safe level for these pollutants. Soot from diesel particulates is also a significant contributor to global warming.<sup>3</sup>

In studies by California's South Coast Air Quality Management District (AQMD) beginning in 1998, AQMD found that diesel particulates are the dominant toxic air pollutant based on cancer risk in the AQMD's jurisdiction, accounting for an estimated 84% of the risk.<sup>4</sup> In its most recent version of the Multiple Air Toxics Study for the South Coast Air Basin, the AQMD determined that "[m]odeling analysis shows the highest risks from air toxics surrounding the port areas, with the highest grid cell risk about 2,900 per million, followed by the area south of central Los Angeles where there is a major transportation corridor."<sup>5</sup> By way of example, on the next page we present a

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<sup>2</sup> The 2005 and 2006 emissions inventories for the Port of Los Angeles may be found at: [http://www.portoflosangeles.org/environment/studies\\_reports.asp](http://www.portoflosangeles.org/environment/studies_reports.asp). For Long Beach, the 2005 emissions inventory may be found at: <http://polb.com/civica/filebank/blobdload.asp?BlobID=4412>, and links to the 2006 emissions inventory at: [http://www.polb.com/environment/air\\_quality/documents.asp](http://www.polb.com/environment/air_quality/documents.asp).

<sup>3</sup> In the United States, toxic diesel emissions are responsible for more than half of the black carbon soot released (CARB, *Health Effects of Diesel Exhaust Particulate Matter*, 2007). A recent report funded in part by the California Energy Commission concluded that "black carbon pollution, which scientists blame for the premature deaths of more than a million people, is one of the major contributors to the retreat of the Himalayan glaciers." The potential role of black carbon in moving the earth toward a climate tipping point related to melting of glaciers or ice sheets requires serious attention. *See also* <http://www.nrdc.org/globalWarming/boosting/contents.asp>; Houston Chronicle, July 28, 2008 ("Scientists Find Soot Has An Even Darker Side").

<sup>4</sup> The AQMD has jurisdiction over an area of 6,745 square miles, with a population of over 15 million. Its jurisdiction includes the Ports of Los Angeles and Long Beach, as well as several enormous railyards and intermodal facilities.

<sup>5</sup> SCAQMD, Draft Multiple Air Toxics Exposure Study in the South Coast Air Basin, 6-2 (January 2008), <http://www.aqmd.gov/prdas/matesIII/matesIII.html>. The "major transportation corridor" referenced is one that is heavily used by diesel trucks carrying cargo containers to local railyards.

graphic showing the sensitive receptors<sup>6</sup> for air pollution within five miles of a proposed Port of Los Angeles expansion project at the China Shipping terminal.

### **Human Health Effects Of Diesel Particulate Pollution**

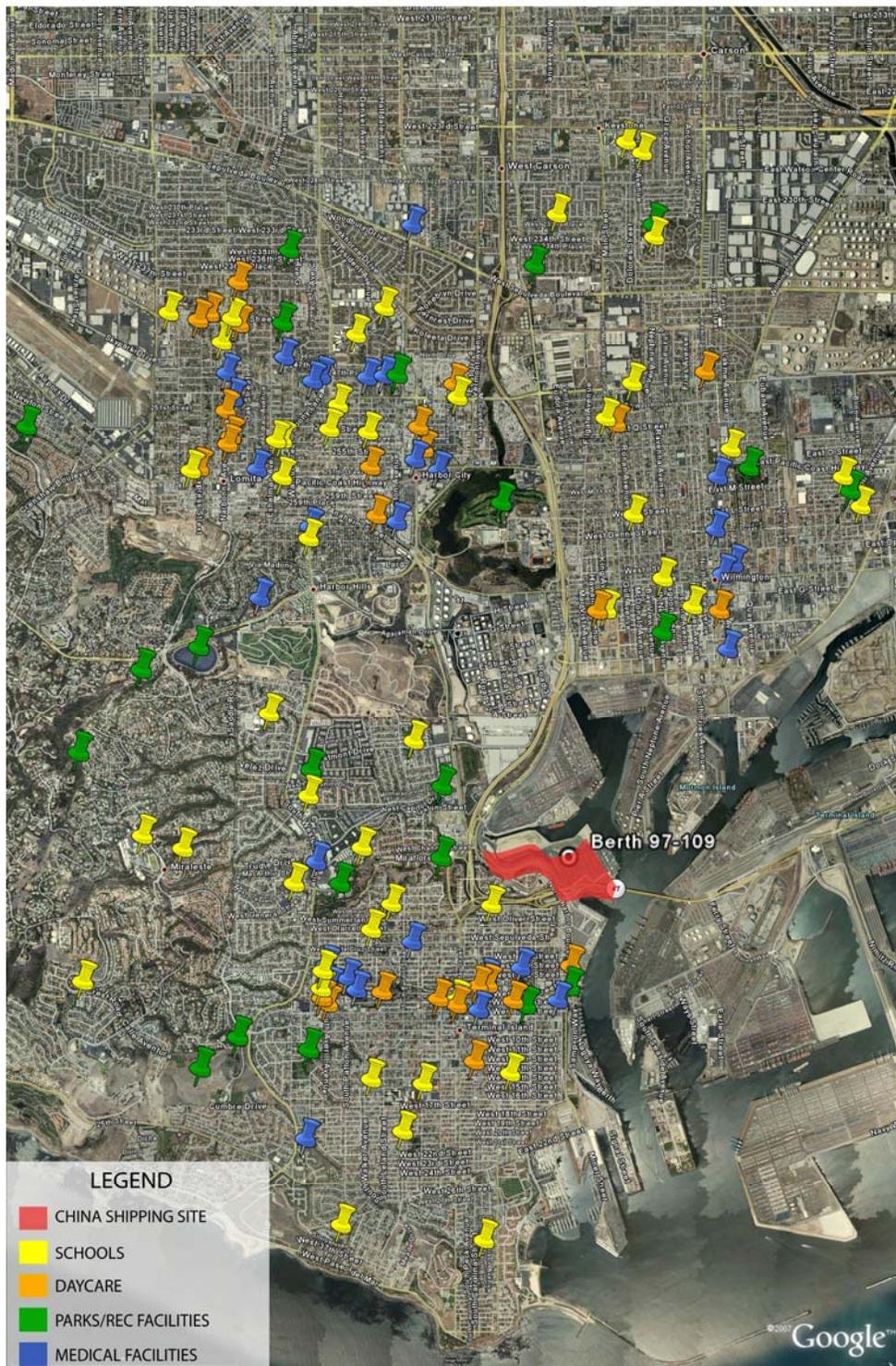
There are many studies of the human health effects of diesel particulates, including studies on the effects on people who live and work near ports and highways that facilitate cargo movement. For example, in 2007, NRDC and the Coalition for Clean and Safe

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<sup>6</sup> Sensitive receptors or individuals refer to those segments of the population most susceptible to poor air quality (i.e., children, the elderly, and those with pre-existing serious health problems affected by air quality). Land uses where sensitive individuals are most likely to spend time include schools and schoolyards, parks and playgrounds, daycare centers, nursing homes, hospitals, and residential communities (sensitive sites or sensitive land uses). See CARB, "Air Quality and Land Use Handbook: A Community Health Perspective," at: <http://www.arb.ca.gov/ch/handbook.doc>



## SCHOOLS, PARKS AND HOSPITALS WITHIN 5 MILES OF CHINA SHIPPING SITE



Ports released a study on the exposure of port truck drivers to diesel exhaust at the Port of Oakland. The study, which included measurements of pollution inside the cab of trucks while drivers were working, found that average black carbon levels (an indicator for diesel PM) measured within truck cabs were at least 10 times higher than the background levels found in a working class Oakland neighborhood. The study also found that port drivers are exposed to increased health risk by up to 2,600 excess cancer cases per million people—double the level considered acceptable by the Occupational Safety and Health Administration, and up to 2,000 times greater than the level typically considered acceptable by state and federal environmental protection agencies.<sup>7</sup> In its Goods Movement Emissions Reduction Plan, the California Air Resources Board (CARB) noted that goods movement-related air pollution can increase all-cause mortality, cardiopulmonary mortality and lung cancer mortality in adults, infant mortality, hospital admissions for all pulmonary illnesses, chronic obstructive pulmonary disease, pneumonia, asthma, and all cardiovascular illnesses. It can also contribute to pre-term births and lower birth weight. Sensitive groups, including children and infants, the elderly, and people with heart or lung disease, can be at increased risk of experiencing harmful effects from exposure to air pollution.

CARB found that goods movement-related pollution in California causes 62,000 cases per year of asthma and other lower respiratory symptoms. A recent study by the Long Beach Alliance for Children with Asthma found that rates of childhood asthma near the

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<sup>7</sup> The NRDC study may be found at:  
<http://www.nrdc.org/health/effects/driving/driving.pdf>.

Ports and Port-serving freeways are 21.9%, compared to 15.6% for the Los Angeles region overall and 14.2% nationally.<sup>8</sup>

CARB also found that people living in communities close to the source of goods movement-related emissions, such as ports, railyards and inter-modal transfer facilities are likely to suffer greater health impacts and these impacts will likely add to an existing health burden.<sup>9</sup> Recent evidence also indicates that air pollution exposure can impair lung function growth in children. The long-term consequences of lower lung function can include shorter lifespan, as lung function peaks in young adulthood and declines thereafter; lung function is the most significant predictor of mortality in the elderly.<sup>10</sup> CARB has recently estimated that 3,700 premature deaths occur every year in California as a result of pollution from the transportation of goods,<sup>11</sup> this is more than the number of people who die from homicide in California every year. CARB's Goods Movement Emissions Reduction Plan estimates the cost to society of the deaths, illnesses, hospitalizations and lost work days caused by goods movement pollution as several billion dollars per year. We will describe below practical solutions for this devastating problem.

### **Port-serving Diesel Trucks' Contribution To Air Pollution In Southern California**

The ports are where old trucks go to die. As long-haul diesel trucks end their useful lives, they tend to be shifted to short-haul work at our ports nationwide. These are, typically, the oldest, dirtiest, and worst maintained trucks in the fleet. A typical use for

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<sup>8</sup> See the California Health Interview Survey, Lifetime Asthma Prevalence 2007, available at: <http://www.chis.ucla.edu/>.

<sup>9</sup> CARB's Goods Movement Emissions Reduction Plan may be found at: <http://www.arb.ca.gov/planning/gmerp/gmerp.htm>

<sup>10</sup> See <http://www.nih.gov/news/pr/sep2004/niehs-08a.htm>

<sup>11</sup> <http://www.arb.ca.gov/Research/Health/pm-mort/pm-mortdraft.pdf>

these trucks at the Southern California Ports is to transport cargo containers from the ports to intermodal railyards, the closest of which is only 4 miles away.

This problem of highly-polluting port-serving diesel trucks is exacerbated by the current economic model of port trucking. Most port truckdrivers are classified as independent owner/operators, and are paid by licensed motor carriers who contract with them on a per-trip basis without any health or other benefits. As a result, the drivers serving the Ports of Los Angeles and Long Beach typically take home less than \$30,000 per year, leaving little, if anything, left to pay for expensive maintenance or repairs.<sup>12</sup> Moreover, a trip to the repair shop typically means that a truck will be out of service for a day or more – and the driver earns no income. These hardships are entirely unnecessary, however. The Ports can solve these problems through sustainable clean truck programs, such as that recently adopted by the Port of Los Angeles.

### **Oceangoing Vessels' Contribution To Air Pollution In Southern California**

In 2007, the Ports of Los Angeles and Long Beach handled 15.7 million TEUs (twenty foot equivalent units) of containerized cargo, 145% of the volume they handled ten years earlier (6.4 million TEUs). Collectively, there were thousands of ship calls in these ports in 2007.

Oceangoing vessels burn the dirtiest diesel fuel in existence, called bunker fuel or residual oil. This fuel is highly contaminated with sulfur and other toxic materials, and is a solid, asphalt-like substance at room temperature; it must be heated to flow into ships' engines. Under the very loose regulations from the International Maritime Organization

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<sup>12</sup> See the March 6, 2008 Beacon Economics presentation to the Port of Los Angeles, located at: [http://www.portofoakland.com/pdf/ctmp\\_03.pdf](http://www.portofoakland.com/pdf/ctmp_03.pdf). The \$30,000 figure was obtained before the recent spike in diesel fuel prices.

(IMO), this fuel can contain up to 45,000 parts per million sulfur. By contrast, diesel trucks in California burn fuel with a maximum of 15 parts per million sulfur.<sup>13</sup> The sulfur content of diesel fuel is the most important determinant of how much diesel particulate matter will be emitted when the fuel is burned.

Unless a ship at dock is hooked up to shoreside electrical power (“cold ironing”) – and few are – these huge cargo ships continue to burn diesel fuel while running their auxiliary engines 24/7 while at dock. In the time it takes to unload and load a large container ship, that ship will emit as much pollution as 1 million cars. Diesel particulate pollution tends to fall to earth relatively near its source. Thus, as AQMD and others have found, the health risks from this pollution are greatest near the Ports and the cargo routes from the Ports.

### **Port Infrastructure Needs And Green Growth**

Although imports at the Ports are currently below last year’s, it is widely expected that import growth will return to the high growth rates that have been experienced over the last decade. The current infrastructure at the Ports is incapable of handling growth of that magnitude, and as a consequence a number of expansion projects are under way. These include:

- The TraPac terminal expansion project at the Port of Los Angeles. This project alone will add the throughput of the Port of Houston to the Port of Los Angeles.

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<sup>13</sup> In 2006, CARB enacted a rule requiring oceangoing vessels to use 5,000 parts per million sulfur fuel in their auxiliary engines within 24 miles of the California coast. The shipping industry successfully enjoined implementation of the rule. In July, 2008, CARB enacted a new rule requiring low-sulfur fuel in the main engines, auxiliary engines and boilers of oceangoing vessels within 24 miles of the coast. It is expected that industry will sue to invalidate this rule also.

- The China Shipping Phases II and III terminal expansion project at the Port of Los Angeles. This is another huge, multi-billion dollar expansion project to handle additional containerized freight.
- The Middle Harbor Project at the Port of Long Beach. This huge project will enable Long Beach to surpass Los Angeles in container throughput.
- Doubling in size of the Union Pacific ICTF intermodal railyard in West Long Beach, four miles from the Ports. The number of container “lifts” at ICTF is projected to double, from 750,000 per year to 1,500,000.<sup>14</sup> Every one of these containers is planned to be carried to the ICTF facility from the Ports by diesel truck.
- A new Burlington Northern Santa Fe intermodal yard, also in West Long Beach, designed to have 1.5 million “lifts” per year. As with the UP facility, every one of these containers will be carried by diesel truck.
- Building a “truck freeway” on SR 47 to connect the ports to the intermodal yards in West Long Beach.
- Rebuilding the Vincent Thomas Bridge, connecting San Pedro with Terminal Island, so that larger container ships can pass under it.
- Expanding the dangerous, congested I-710 freeway to handle increased truck traffic carrying cargo containers to railyards near downtown Los Angeles.

Los Angeles Mayor Villaraigosa, Long Beach Mayor Foster, officials from both Ports, and NRDC agree that these project must grow “green,” or not at all. What this means to

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<sup>14</sup> A container “lift” is a movement that takes a cargo container, usually weighing over 50,000 lbs, from a truck and places it on a train.

NRDC is that there must not be any additional health risk to the community – the current health risk is already unacceptable.

The Ports, under pressure from NRDC and other environmental and community groups, have begun to take steps to make sure that port growth is “green.” In particular, both Ports have enacted programs to clean up the diesel trucking fleet, to encourage “cold ironing” when ships are at dock, to incentivize ships to use much cleaner diesel fuel within 40 miles of the coast, and to use the cleanest possible construction equipment in the Port expansion project. In addition, the Port of Los Angeles, with the AQMD, has funded the development of a working electric truck.<sup>15</sup> The clean trucks programs are to be funded by a combination of container fees and State bond funds. The marine fuel plan is currently voluntary, with the Ports funding the difference in cost between bunker fuel and the much cleaner distillate fuel. An example of the success of these steps is the recent Port of Los Angeles TraPac project, which was stalled until a coalition of environmental, community and labor groups worked with City and Port officials to craft an agreement that increased community protection from the effects of the project.

*In contrast, without meaningful, effective, well-funded plans in place to clean up port trucking and to move to non-fossil fuels for the transport of cargo containers from the ports, to clean up marine fuel emissions, and to clean up port-serving construction equipment, there is no possibility that the Ports can grow “green.” In particular, if the lawsuit by the trucking industry filed on July 28, 2008 against both Ports is successful in its goal of killing the Ports’ clean trucks programs, Port and infrastructure expansion*

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<sup>15</sup> See [http://www.portoflosangeles.org/newsroom/2008\\_releases/news\\_051608\\_et.asp](http://www.portoflosangeles.org/newsroom/2008_releases/news_051608_et.asp). A video of the electric truck in operation is at: <http://www.youtube.com/watch?v=0f1AlrG8gVU>.

*will come to a halt. The same will be true if the retail industry kills the container fees that fund the clean trucks programs, or if the shipping industry kills the very recent CARB clean marine fuel rule and the Ports decide to stop subsidizing the industry. These fees and plans are interdependent, and if one falls, they all do.* We will discuss below in more detail the Ports' container fees and clean trucks programs.

### **The Ports' Container Fees**

Both the Port of Los Angeles and the Port of Long Beach have enacted a \$35 per TEU fee on loaded cargo containers at their ports.<sup>16</sup> The fees are to be charged to cargo owners and collected by marine terminal operators. Money provided by these fees will help fund the Ports' clean trucks programs. A study led by a well-known expert in international shipping, James Corbett of the University of Delaware, found that fees of this magnitude would not cause cargo traffic to be diverted from the local Ports.<sup>17</sup> The fees are expected to raise roughly \$3 billion for the funding of the Ports' clean trucks programs.

A cargo container may hold 50,000 pounds or more. Doing the math, a \$35.00 increase in cost per container works out to less than one-tenth of one cent per pound. For a 6-pound laptop computer, that is less than a penny. For a 70-pound big screen TV, the increase is roughly 5 cents. Accordingly, claims by the retail industry that these fees are oppressive are clearly unfounded.

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<sup>16</sup> See <http://www.portoflosangeles.org/environment/cif.asp> regarding the Port of Los Angeles container fee, and <http://www.polb.com/civica/filebank/blobload.asp?BlobID=4708> regarding Long Beach.

<sup>17</sup> The Corbett report may be found at: <http://www.coalitionforcleanair.org/pdf/reports/cca-cargo-on-the-move-through-california-report.pdf>

Without the container fees in place, the Ports' clean trucks plans cannot be funded. New, 2007-compliant diesel trucks cost upwards of \$150,000. There is simply no way that port truckers taking home \$30,000 per year or less can afford a vehicle that costly – and no way that a bank would finance one in those circumstances.<sup>18</sup>

### **Legality Of The Container Fees**

The Ports' container fees are valid under the Commerce Clause of the United States Constitution and under the General Agreement on Tariffs and Trade (GATT).

Preliminarily, the container fees are not taxes within the meaning of the Constitution. They are imposed on the shipment of containers precisely to defray the cost of shipping those containers by truck, an indispensable part of container movement as of 2008. They are not imposed, for example, to provide funds for general public purposes such as police protection. *See, e.g., Union Pacific R. Co. v. Public Utility Com'n of State of Oregon*, 899 F.2d 854, 859 (9<sup>th</sup> Cir. 1990) (Oregon levy on railroads is not a tax within the meaning of the federal Railroad Revitalization and Regulatory Reform Act because it “is designed to recoup the costs of a regulatory program from members of the industry regulated, rather than to raise general revenues”); *see also San Juan Cellular Telephone Company v. Public Service Commission of Puerto Rico*, 967 F.2d 683 (1<sup>st</sup> Cir. 1992) (reviewing the caselaw).

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<sup>18</sup> The Port of Long Beach recently invited finance companies to indicate their interest in funding the 20 percent of the cost of a new truck that the container fees will not cover. Of the three companies that responded, two declined to take on the entire Long Beach program, and the one company that did estimated a 40% default rate and touted its expertise in repossessing trucks.

The container fees will not violate the Commerce Clause because they will facilitate, not burden, interstate commerce, because they will not discriminate against foreign as opposed to domestic commerce, and because the amount of the fees is not excessive in comparison to the cost of cleaning up the Port trucking fleet. *See, e.g., Evansville-Vanderburgh Airport Authority District vs. Delta Airlines*, 405 U.S. 707 (1972).

Moreover, the Ports, as landowners, are largely protected against Commerce Clause challenges by the market participant doctrine. *Cf. Engine Manufacturers Association v. South Coast Air Quality Management District*, 489 F.3d 1031 (2007).

Likewise, the container fees will not violate GATT because, under Article VIII of GATT, the container fees are limited to the approximate cost of the services to be rendered, and are not an indirect protection of domestic products or a general tax. The container fees are also allowed by Article XX of GATT which permits measures “necessary to protect human, animal or plant life or health.”

### **The Ports’ Clean Trucks Programs**

Both the Port of Los Angeles and the Port of Long Beach have enacted Clean Trucks Programs, funded by the \$35 per TEU container fees and from State of California bond proceeds. Both plans phase out older trucks beginning in October, 2008, with the goal of replacing all 16,000 trucks in the current fleet with much cleaner, 2007-compliant trucks within five years.<sup>19</sup> Both plans require, as a condition of entry onto Port property, that the drivers or trucking companies agree in a “concession agreement” to abide by certain

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<sup>19</sup> The schedule for the progressive ban is: pre-1989 trucks are prohibited as of October 1, 2008; pre-1994 trucks are prohibited as of January 1, 2010; non-retrofitted 1994-2003 trucks are prohibited as of January 1, 2010; and pre-2007 trucks are prohibited as of January 1, 2012. 2007 model trucks are over 60 times cleaner than pre-1989 trucks.

rules concerning the upkeep and safety of the trucks, consent to searches, data collection and related matters.<sup>20</sup>

One significant difference between the two programs is that the Los Angeles program requires a phase-out of individual owner/operators in favor of trucking companies that own the trucks and employ the drivers. This is the environmentally superior alternative because well-capitalized trucking companies are better able to buy, maintain and replace expensive new trucks than low-income drivers are. In addition, a company-based system will allow for improvements in logistics so that trucks are not “deadheading” with empty containers, and allow a decrease in idling time through better scheduling.

By contrast, the Long Beach program continues to rely on owner/operators to fund the purchase of expensive new trucks. The Port of Long Beach has said that it would pay for maintenance for new trucks purchased under its Clean Trucks Program, but no details have been made public about the scope or duration of this promise. In addition, the Long Beach program is a one-shot plan, such that when the 2007-compliant trucks wear out, there will be no money to replace them.

Although there have been industry complaints in the press about the Los Angeles plan, it is important to note that the Federal Maritime Commission, on June 13, 2008, gave the green light to both the Los Angeles and Long Beach truck plans, finding that “there was no basis at this time to determine that the Agreement [to cooperate on their clean truck

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<sup>20</sup> The concession agreements can be found at .  
<http://www.polb.com/civica/filebank/blobdload.asp?BlobID=5298> (Port of Long Beach)  
and [http://www.portoflosangeles.org/newsroom/2008\\_releases/news\\_071808ctp.asp](http://www.portoflosangeles.org/newsroom/2008_releases/news_071808ctp.asp) (Port of Los Angeles).

plans] is likely to result in an unreasonable increase in transportation costs or decrease in services.”

### **Legality Of The Clean Trucks Programs**

Industry has claimed that the Clean Trucks Programs violate the Commerce Clause of the United States Constitution and the Federal Aviation Administration Authorization Act (FAAA). This argument ignores the fact that the Ports have powers as landlords that governmental bodies would not have as regulators, and that those powers include the ability to choose which trucks can do business on Port property. This is commonly known as the market participant doctrine, which applies in both Commerce Clause and FAAA contexts. See, e.g., *Engine Manufacturers Association v. South Coast Air Quality Management District*, 489 F.3d 1031 (2007) (Commerce Clause); *Independent Towers of Washington v. Washington*, 350 F.3d 925, 928 (9th 2003) (FAAA).

Nonetheless, on July 28, 2002, the trucking industry filed suit in federal district court in Los Angeles to kill both Ports’ Clean Trucks Programs, arguing that the programs violate the FAAA and the Commerce Clause.<sup>21</sup> NRDC, the Coalition for Clean Air, and the Sierra Club will ask the court for permission to intervene as defendants to help uphold these important programs. If industry’s suit is successful, there will be immediate, negative effects on public health in the ports area, and on the ability of the Ports to expand, or even to do business as usual.

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<sup>21</sup> *American Trucking Association v. City of Los Angeles, et al.*, United States District Court for the Central District of California, Case No. CV-08 04920 CAS(CTx).

## **Conclusion**

Too many people in California suffer serious health impacts from port related pollution, in the name of cheap goods that line store shelves here in California, as well as inland. There are many feasible, cost-effective and readily available solutions to clean up this pollution and improve public health. Millions of impacted residents have been waiting for ports and businesses that benefit from the ports to step up, finance and implement these basic measures. Container fees are the most effective, efficient means to ensure that the necessary measures outlined here are achieved in California and that the staggering health toll from port pollution is addressed. We must work together to clean up the thousands of trucks and ships blanketing communities throughout the state with toxic soot. The Clean Truck Programs and Container Fees supporting these programs are on solid legal and technical ground to accomplish this important task.

I want to thank the Subcommittee for the opportunity to present testimony on this very important subject. I also want to thank my NRDC colleagues Adrian Martinez, Diane Bailey and Isaac Steinmetz for their help in preparing this testimony. I hope that the Subcommittee's work can help our local ports grow green so that public health and commerce can improve together.