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December 8, 2009

MARY D. NICHOLS, Esq.  
CAL EPA ARB  
CHAIRPERSON OF THE ARB  
1001 "I" Street  
Sacramento, California 95815

**RE: DECEMBER 31, 2009, DOOMSDAY FOR THE NATIONAL PORT DRIVERS ASSOCIATION  
AND NORTHERN CALIFORNIA RAIL/PORT DRIVERS ASSOCIATION  
"CARB'S DRAYAGE TRUCK REGULATORY ACTIVITIES"  
"CLEAN TRUCK PROGRAM" LOS ANGELES  
"COMPREHENSIVE TRUCK MANAGEMENT PLAN" OAKLAND**

I am requesting that you declare under section 22c of the regulation an "EMERGENCY EVENT" Will occur if the "Drayage Truck Regulatory Activities" goes into effect on December 31, 2009 barring thousands of trucks from our ports and harbors.

I am requesting that you issue an "EMERGENCY DECREE" under section 23 for a determination by the Executive Officer that an "Emergency event" will occur that requires immediate temporary operation of drayage trucks at ports and intermodal rail yard facilities

CARB's DRAYAGE TRUCK REGULATORY ACTIVITIES and the "Ports" Programs must be extended and re-evaluated that are taking effect on December 31, 2009 affecting trucks with model year 1993 or older that are no longer legal at ports and intermodal rail yards and trucks with model year 1994-2003 engines must be equipped with an ARB approved Level 3 control device (e.g. a particulate filter) starting January 1, 2010.

Under the guise of "Homeland Security" and the "Environment", the Ports of Los Angeles and Oakland, through an agreement of the Ports and a Resolution of the Harbor Commissions are going to eliminate the independent truckers servicing the Ports. The Resolution for Los Angeles was approved by former City Attorney, Rocky Delgadillo and signed by the Mayor of Los

Angeles and requires independent truck owners to be phased out over a period of time. The Resolution for Oakland was signed by Mayor Ronald Dellums.

The resolution also bans pre 1993 trucks and '94-'03 trucks that have not been retrofitted effective December 31, 2009

The imposition of these Resolutions has a disproportionate impact on minorities who comprise most of the port truck drivers.

America has grown and survived with ordinary people owning their own business under the mantle of free enterprise. The independent truck owners will be forced to become an employee of a company approved under certain guidelines by the Ports of Los Angeles and Oakland. There should be a method to comply with security issues and permit independent ownership of trucks that work out of the "Ports".

I have met with members of the National Port Drivers Association and Northern California Rail/Port Drivers Association. The look in their eyes is not that of a terrorist but of an honest, sincere, hard working family man that wants to live the American Dream.

The United States 9<sup>TH</sup> Circuit stated in their decision of March 20, 2009, No. 08-56503, D.C. No. 2:08-CV-04920), that the Clean Truck Program is unconstitutional in whole or in part and is pre-empted by the Federal Aviation Administration Act (FAAA), 49USC section 14501 (c) because they improperly attempted to regulate the " price, route, or service of any motor carrier".

However, the Los Angeles port is enforcing the Clean Truck provisions under an order drafted by the Board of Harbor Commissioners known as Tariff Code No. 4, Section 20, General Rules and Regulations, Drayage Trucks.

The container fee that is supposed to be imposed on the owner of the containers is also being charged to the Independent Truckers.

Trucker's wages are being impacted. Their hours and working conditions have changed as a result of the imposed container fee. The average hourly rate is \$ 14.00,

More than \$ 60 million dollars in grant money went to those motor carriers that met the criteria set up by the Ports of Los Angeles and Long Beach.

The Port of Los Angeles funded 117 trucks for 10 companies participating in the program at a cost of \$21.5 million. Why did the Port of Los Angeles exclude the minority independent truck owners from this lavish gift bestowed upon the wealthy motor carrier companies?

Twenty four (24) companies own over 4000 of the new trucks.

Six (6) trucking companies received over \$ 8 million dollars in Long Beach Funds.

Independent Truckers are demonstrating and exercising their rights to save the American Dream of owning their own small business.

These men want to Go Green and yet most of them have been denied grants to purchase new trucks.

NPDA members are being threatened at the ports and one of the NPDA members was killed in a mysterious accident. The proposed changes have placed a heavy burden on the truckers. Many can no longer support their families. Countless members have severe health related problems brought on by this stressful situation. Sadly, one member became so desperate he committed suicide.

The only thing “Green” about the CLEAN TRUCK PROGRAM is the millions of dollars made by the major trucking companies, including a billionaire, under this program. You could win a lottery before you defy the odds of two motor carrier recipients each receiving the identical amount of \$1,349,905.00 in Long Beach Funds and having the same zip code. The nations largest privately held trucking company with over 17,000 trucks nationwide has over 700 trucks in the Clean Truck Program. A Denver based trucking company with assets over \$643 million on the New York Stock Exchange has over 200 trucks in the Program. You think Bernie Madoff is the only one to have a scheme to fleece the system and reward the rich?

The 2006 San Pedro Bay Ports Clean Air Action Plan, Port Related Emissions, Baseline DPM Emissions, list **Rail Locomotives 6%, Heavy Duty Vehicles 10%, Cargo Handling Equipment 14%, Harbor Craft 11% and Ocean-going vessels 59%.**

**Baseline Year NOx emissions: Rail Locomotive 13%, Heavy Duty Vehicle 26%, Cargo Handling 12% , Harbor Craft 13% and Ocean Going Vessels 36%.**

**Baseline Sox Emissions: Rail Locomotives 2%, Heavy Duty Vehicles 1%, Cargo Handling Equipment 1%, Harbor Craft 6%, Ocean Going Vessels 90%**

**Why is the Independent Trucking Industry the only industry targeted by: the State of California, City of Los Angeles, Port of Los Angeles, City of Long Beach, Port of Long Beach, City of Oakland, Port of Oakland, for such draconian execution of admission to port and rail way commerce?**

Unless an extension of the December 31, 2009 deadline of these programs are granted, thousands of minority independent truckers will be barred from entering the Ports and rail ways. Their families and the families of all other trucking support related businesses will feel the devastating effects and end up homeless at our doorstep.

As Californians we know the devastation of earthquakes, wild fires and floods.

The December 31, 2009 deadline against the Independent Rail/Trucking Industry will be known as Doomsday in America creating chaos, the worst economic disaster the State has ever experienced and discrimination against minority truck owners and operators. Sofia G. Quinones (323) 262-9071 is also assisting in this effort.

In a speech from Washington on Tuesday, President Obama plans to send Congress a list of ideas he supports for a new jobs bill. He will endorse sending the biggest chunk of fresh money (\$70Billion) to cash-strapped state and local governments to stem their layoffs and on expanding a program that gives people cash incentives to fix up their homes with energy-saving materials.

I have a better plan for some of the \$70 billion. Help the independent truck drivers come into compliance with honest and sound regulations. Retrofit the crane operations at the ports and reduce their emissions.

Much has been said by many newspapers about the reputation of CARB ever since Dr. Telles addressed the Board and discussed the findings of Dr. James Enstrom, UCLA who disclosed that a CARB “Dr.” was not a real “Dr.”

Also, there is no real “term limit” for the scientists that advise CARB. There must be a change in this policy and a free exchange of ideas.

A slick “Madison Avenue” style public relations approach has led the public to believe that they will be breathing cleaner air after December 31, 2009.

You left out the bigger polluters in the harbor: steam ships, crane operations, harbor crafts and railroads. They will still be around after you destroy the independent truckers.

Unemployment is predicted to remain over **10%** through 2015. California’s “central valley” has over **25%**. What do you think the unemployment rate will be after December 31, 2009 when all the supporting businesses of the independent truckers are also affected by these draconian edicts?

There is no more “CARB-GATE”. CARB faces severe potential civil liability for conspiracy, antitrust and civil rights violations along with the Cities, Ports, Harbor Commissions of Los Angeles, Long Beach and Oakland.

I suggest that you attempt to mitigate your exposure to potential civil liability. Perhaps you were not aware the majority of the independent truckers comprising the National Port Drivers Association and the Northern California Rail/Port Drivers Association are of minority descent.

James Morgester's December 8, 2009 letter to the Board states: "I am writing this letter in regards to the ARB's "Drayage Truck Regulation "from the perspective of my experience as the ARB's Chief of Enforcement Division for over twenty years.

The primary principle of ARB's regulations has always been to allow a reasonable transition period for new regulations so the regulated community could come into compliance without undo economic harm. In addition there has always been a provision to allow an extension of the compliance date for individuals or a class of impacted sources based on changing technical or economic circumstances.

My review of the "Drayage Truck Regulation" shows that it violates the above principles.

In addition it appears that the net effect of the regulation thus far is to give preference to a select group of trucking companies for entry to the ports and rail yards of California while locking out all competition.

In today's economic climate it is important that the ARB revisit this regulation to be sure it does not violate the above principles."

Sincerely,

Anthony G. Patchett, Esq.

Cc: Carmen Trutanich, Esq. City Attorney, City of Los Angeles  
William Carter, Esq. Chief Deputy City Attorney, City of Los Angeles  
Antonio Villaraigosa, Mayor, City of Los Angeles  
Robert Foster, Mayor, City of Long Beach  
Ronald Dellums, Mayor, City of Oakland  
Eric Holder, Esq. United States Attorney  
Tom Girardi, Esq. Girardi & Keese  
Dr. James Enstrom, UCLA  
Dr. Kaye Kilburn, M.D. (retired-USC, Keck School of Medicine)  
James Morgester (retired- Chief of Enforcement Division, CARB)  
Charles Lamoureux, ECM Group