

**New York City Council Hearing on Resolution 414
October 28, 2010**

Testimony by Soledad Gaztambide-Arandes, Policy Analyst, UPROSE

Good afternoon and thank you for the opportunity to present before you today. I am here representing UPROSE, Brooklyn's oldest Latino community-based organization. Based in Sunset Park, Brooklyn- we work to heighten community awareness, develop environmental strategies and participatory community planning practices, and promote sustainable development, governmental accountability and environmental justice. We are also members of the New York City Environmental Justice Alliance (NYC-EJA) and the Coalition for Healthy Ports.

We would like to thank all the council members who submitted Resolution 414. An amendment to federal law is absolutely necessary in order for the Port Authority of New York-New Jersey to implement a comprehensive program, like the Los Angeles Clean Truck Program, that can tackle the economic and environmental issues created by the port trucking industry. This resolution is grounded on the fact that reducing toxic diesel emissions from trucks is essential to improving air quality for the health of port adjacent communities and of truck drivers. It indirectly acknowledges that the solutions currently proposed by the Port Authority overlook the economics behind this polluting industry and place the financial burden on the so-called "independent contractors" who in current conditions struggle to make ends meet. We believe that trucking companies should be the ones responsible for introducing clean truck technology improving the environment and the labor conditions of drivers.

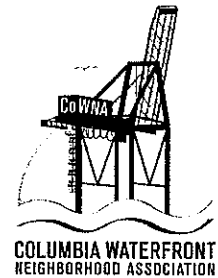
Why is this important to us? The history of Sunset Park is very much tied to its working waterfront that for decades has employed our residents and permits us to be one of the largest walk-to-work communities in New York City. Unfortunately, the community also suffers from the negative health effects of having a concentration of polluting infrastructure, most of it on or near the waterfront. One of UPROSE campaigns has centered on the ill public health and land use effects of the heavily congested, inadequate and always under construction Gowanus Expressway that crosses through Sunset Park and is a mayor truck route. The presence of the Gowanus Expressway, as well as other truck routes on 3rd and 4th Avenues, contribute greatly to Sunset Park's poor air quality affecting the health of this community.

There are many plans for the redevelopment and revitalization of the Sunset Park Waterfront. These plans have been produced by both community and city agencies; Sunset Park's 197a Plan, the New York City Economic Development Corporation Sunset Park Waterfront Vision Plan, and still in draft format, the Department of City Planning Vision 2020 Comprehensive Waterfront Plan. These plans are different in nature but what they have in common is an agreement that it shall continue to be a working waterfront and that policies should encourage maritime uses. It is likely that one of the results will be the increase in trucks traveling through our waterfront. There is also a possibility that in the near future our piers might also become container ports.

At a regional level the efficient use of our ports could reduce truck miles traveled potentially proving a more sustainable way of transporting goods. Relying more on rail and barge could help decrease overall transportation related emissions. Waterfront dependent uses, both industrial and public access are in general a better use for this valuable land. We certainly support these general principles but demand that policy makers and agencies be aware of the local cumulative impacts and ensure that new developments don't impose additional environmental burdens to host communities. We support a working waterfront because we want to retain and grow local jobs that are not harmful to workers health and promote global 'green' practices.

We cannot ignore that port activity is intricately tied to the trucking industry, one of the main contributors to diesel pollution. Diesel pollution in the city causes hundreds of premature deaths, thousands of asthma attacks and days of lost work due to sickness. We support a comprehensive solution similar to the LA Clean Truck Program because we stand in solidarity with environmental justice communities in New York and New Jersey who disproportionately suffer the consequences of the current trucking industry. It is not enough to set targets to turn over older, less efficient truck engines or restrict operations of trucks that do not meet certain standards. These are important steps but we cannot support policies that will impose an unfair burden on the truck drivers who are currently struggling to provide basic needs for their families. This resolution is a first step to recognizing and supporting a comprehensive solution.

Thank you.



**Testimony of Mina Roustayi,
Columbia Waterfront Neighborhood Association,
Before the Waterfront Committee
On Res. 414-A
October 28, 2010**

My name is Mina Roustayi and I am here on behalf of the Columbia Waterfront Neighborhood Association. CoWNA represents one of the neighborhoods in Brooklyn that border the Red Hook Container Terminal. Our sunsets are New York's best kept secret. Against the backdrop of wide-open skies, the Manhattan skyline and the Statue of Liberty, giant port cranes perform daily pirouettes.

CoWNA believes the Red Hook port is a public and environmental asset for New York City. It provides good jobs and delivers goods that would otherwise be trucked in from New Jersey. However, diesel pollution from port trucks is taking a heaving toll on the health and safety of my bustling and growing neighborhood. Every day, hundreds of people from all over Brooklyn flock to the new Brooklyn Bridge Park. Pretty soon, 41 families will move into a new condo development just one block from the port. Our poor air quality requires immediate attention.

As a member of the Coalition for Healthy Ports, CoWNA believes the Port Authority of New York and New Jersey should adopt a clean truck program modeled on the one in Los Angeles. We endorse the Clean Ports Act of 2010 as necessary for achieving our goal. We are not alone. Other Brooklyn organizations endorsing the Clean Ports Act include Community Board 6, the South Brooklyn Working Families Party Club and UPROSE.

CoWNA heartily endorses Resolution 414-A. We are grateful that the Council is taking up the issue of port pollution. And we urge every member of this committee and every councilmember to vote yes and send a message to Congress and the Port Authority.

**For more information, contact:
Norman Cox, President
Columbia Waterfront Neighborhood Association
ncox@fgca.com**

Good afternoon.

My name is Kirby Reyes and I am a resident of the Bronx.

This is a picture of my daughter Ariagna. I am a single father and I am all that Ariagna has in this life.

I am here today because for the last 13 years I have been a truck driver at the ports of New York and New Jersey. This has been the way I have provided for me and my daughter. But now, because of the Port Authority's plan, my whole world is about to be turned upside down. And so is my daughter Ariagna's.

I have a lot of co-workers that wanted to be here today and speak to you about what is happening at the ports, but most of them were too afraid to speak out and couldn't afford to take a day off because they have families that they have to support too.

But I feel like I have nothing more to lose.

I drive a 1991 Peterbuilt truck. I am very proud of my truck and I take very good care of it.

But on January 1st my truck won't be allowed at the ports. And because I have been misclassified as an 'independent contractor' all these years, I won't be able to collect unemployment. I will not have a way to support my beautiful daughter Ariagna.

I have been told to go to the Port Authority and they will give me grant money and help me find a loan, but the truth is that I cannot afford any truck loan, no matter how small or how good the interest rate.

I am barely able to make ends meet, yet every day the expense of owning my truck is increasing and my income is decreasing.

Fuel costs and tolls have doubled in the last 5 years.

And in the same period of time, my trucking company has lowered the rates they pay me. For example, I used to take containers from port-to-port. The trucking company would pay me \$150 for each load. But now they only pay me \$75.

If I didn't take these loads for less money, then they wouldn't offer me loads anymore. And because I am a single father, and because my beautiful daughter Ariagna is everything to me, I had to accept what they gave me.

But like I said, because of the Port Authority's plan, I have nothing more to lose.

This is why I am here today. I want to tell my story so you know why this resolution is so important. It's not just about clean trucks. It's also about hard working people like me. And our families, like my Ariagna.

**Testimony of Amy Goldsmith
NYC Waterfront Committee
October 28, 2010**

Good afternoon Chairman Nelson and members of the Waterfront Committee. Thank you for the opportunity to speak before you today, and for your sponsorship of NYC Council Resolution 414.

My name is Amy Goldsmith. I am the State Director of the New Jersey Environmental Federation, and the Chairwoman of the Coalition for Healthy Ports. The Coalition for Healthy Ports is a broad alliance of environmentalists and environmental justice, labor and public health advocates, truck drivers, faith and community organizations. We see an undeniable link between poverty and pollution at the New York and New Jersey ports and support a cleaner, more efficient, 21st century business model for port trucking.

When the Port Authority of New York and New Jersey (PANYNJ) announced its truck ban and \$32 million replacement program that included \$7 million in federal stimulus dollars, they indicated that this would be a first step and that a more comprehensive program was needed to truly address the broken, polluting port trucking industry.

However, since that announcement there have been no additional plans to address either the broken economics of port truck drivers or the pollution crisis that the old, highly polluting trucks are creating in port adjacent communities.

In fact, the Port Authority's plan puts the entire financial burden for upgrading the fleet on independent contractor drivers who make on average \$28,000 per year with no health benefits. The Coalition has, and continues to voice opposition to truck programs that place the costs of cleaning the air on the backs of drivers who are ill equipped to pay for newer, cleaner trucks that can cost \$100,000 or more.

The PANYNJ's intentions were confirmed in a recent article in *Transport Topics* where the PANYNJ backpedaled further on even their weak ban and financing plan by calling their sticker program voluntary. These comments make clear that the Port Authority has no intention or will to enforce a program that has any enforcement protocol, sustainability or accountability to port adjacent communities who suffer each day with life threatening pollution from trucks.

It is a shame that officials from the Port Authority are not here to answer questions about their program. To our knowledge, the Port Authority's \$32 million program has approved somewhere between 6 and 11 loans. Those are very expensive trucks, yet as far as we know they haven't actually been put into service nor are they the newest and cleanest trucks. But it would be nice to get some verifiable answers from the Port Authority.

For all these reasons, we, along with the PANYNJ, call on Congress to pass the Clean Ports Act of 2010 so that local port authorities can have the clear legal authority to pass progressive programs modeled after the USEPA award-winning Los Angeles Clean Truck Program.

While the case is under appeal at the 9th Circuit Court, the federal District Court judge found that the Port of LA has the right to protect its economic interest as it competes with other ports by implementing a Clean Truck Program which shifts the cost and responsibility for clean trucks from underpaid workers to companies. Now is the right time for the PANYNJ to take a more aggressive and comprehensive approach to fixing the port trucking system on which virtually all goods movement in the region depends.

Trucking companies should take responsibility for both the equipment and workers that help keep the supply chain moving in our region. Without this fundamental restricting of the industry, clean air gains will be negligible and short lived. We see this already in that the Port Authority's program has had limited participation and success, while the Clean Truck Program has brought over 8,500 2007 or newer engine model trucks into port service.

We thank the Councilman Lander, Chairman Nelson and the Waterfront Committee for sponsoring Resolution 414 which encourages Congress to support H.R. 5967 – the Clean Ports Act of 2010 and also calls on the Port Authority to enact a comprehensive Clean Truck Program modeled after the successful program implemented in Los Angeles.

We celebrate the legal victory in California that we are confident will be upheld by the Ninth Circuit Court of Appeals and bring much needed relief to port trucks and residents in port adjacent communities in the Los Angeles area. We call on the Port Authority enact programs like LA that result in good jobs, clean air and a healthy and competitive port economy.

Testimony of Victor Martinez, Port Truck Driver
New York City Council Waterfronts Committee, June 17th, 2010

My name is Victor Martinez and I have been a port truck driver for 12 years. I haul containers in and out of the ports of New York and New Jersey, including the Howland Hook port on Staten Island. I am here today to tell you a little bit about my life as a port truck driver and how it affects me, my wife and my two little girls.

First let me say that I have always wanted to be a truck driver. It is a skilled job and a job that I am proud to have. But the reality of being a truck driver is different than what I could have imagined. I am a professional truck driver and I should be earning a fair living, instead I am scraping by to make ends meet. I am misclassified as an "independent contractor" and as a result I am forced to pay for all of the expenses of being a truck driver, including my truck, gasoline, tolls, maintenance and repairs. I'm also responsible for the equipment I do not own but have to use in order to do my job. The chassis that are used to put a container on my truck are often old and unsafe. If a tire blows out or if a light stops working, then I am forced to pay to have it fixed.

If I were properly classified an employee of the company that I have worked for for 6 years, that company would be responsible for all of these expenses, but instead they have put it all on my shoulders because I am misclassified as an independent contractor. Because of this I am denied medical benefits and all the other rights and benefits – like unemployment insurance, social security and workers comp - I should receive as an employee.

I'm not a small business man either. They tell me when to show up for work, where to drive the containers to and how much they will pay me. Real 'independent contractors' have the final say in all the work they do, and can negotiate their rates and working hours, but I can't – it's take it or leave it.

Secondly, I am worried about my health. I sit behind a diesel engine for 50 or 70 hours each week. My family and I live in Newark not far from the ports. I know that the diesel pollution is bad for my health, and for my family and for my community. Because of this and because of the truck ban happening soon, I recently sold my 1990 truck and purchased a newer 2003 truck.

But getting a newer, cleaner truck has been more difficult than I thought. My old truck was completely paid for. I was able to barely make ends meet and provide necessities for my family then, but now that I have a new truck and truck payments I am struggling to provide for my family. Because of the new debt, the sacrifice I've made is to work more and spend less time with my family.

I am telling you my story because the truck ban is going to put a lot of other drivers in the same difficult situation that I'm in. I believe that everyone that works as hard as we do should be able to provide a better future for our families. The only way we can make this happen is with your help.

FOR THE READER'S

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**TESTIMONY OF MATTHEW YATES BEFORE NEW YORK CITY COUNCIL
COMMITTEE ON THE WATERFRONT**

HEARING DATE: OCTOBER 28th, 2010.

Thank you Chairman Nelson and members of the New York City Council Waterfront Committee for allowing me to testify here today to express our support for the Clean Ports Act of 2010 authored by Congressman Jerold Nadler and for the New York City Council Resolution 414. Frankly, our freight transportation system will improve if ports are granted authority to enact and enforce programs that improve environmental, safety and efficiency conditions caused by the port trucking industry.

Ports are the gateways that enable leading transportation companies such as ours to move goods in and out of this country. Since most of the goods traveling to and from our docks are hauled by a truck, we need an effective and efficient port trucking industry.

American Stevedoring Incorporated (ASI), is a multi-service port operator and transportation service provider. With over \$7 billion in annual cargo volume, ASI offers port development services, direct stevedoring and lashing for container, bulk and neo-bulk products, state of the art warehouse operations, and related truck, chassis and

container support services. Across our projects, we have approximately 600 employees in the New York / New Jersey region.

While many in the business community may disagree on the solution, most agree that the port trucking industry is a weak link in our country's freight transportation system. Compared to other freight industries such as ocean carriers, marine terminal operators, long haul trucking, and railroad operators, port trucking is woefully undercapitalized, operates old equipment, and does not deploy modern technologies or innovative strategies to match loads. In addition, it is no secret that port drivers are poorly compensated and have their rates imposed on them by much more powerful economic entities.

Resolution 414 calls on Congress to pass the Clean Ports Act of 2010 so that local port authorities can have the clear legal authority to pass progressive programs modeled after the award-winning Los Angeles Clean Truck Program and not be subject to litigation. It also goes a step further and calls on the PANYNJ to enact a comprehensive clean truck program for the NYNJ region because ongoing litigation in Southern California is not an excuse for us not to act. The Port Authority of New York and New Jersey has announced a truck ban and truck replacement program, but there are growing concerns that the PANYNJ programs will harm drivers and do little to clean the air, all at the expense of the public.

Finally, we value our employee workforce and are proud of the investments we have made in the equipment we use to haul cargo and find no problem with port trucking companies being required to move to an asset-based system.

We hope you will give careful consideration to Resolution 414. Thank you.

Testimony before the New York City Council Waterfronts Committee

Amy Traub

Director of Research, the Drum Major Institute for Public Policy

October 28, 2010

My name is Amy Traub and I am Director of Research at the Drum Major Institute for Public Policy, a non-partisan think tank based here in New York City. When I had the opportunity to speak to you a few months ago, I mentioned that one of our primary projects at DMI is to highlight public policies that have been successful at improving people's lives and should be replicated in New York and elsewhere. The Clean Truck program at the Port of Los Angeles is one of the most promising and effective policies we've found.

Resolution 414 is a positive and constructive measure. I urge you to pass this resolution calling on the Port Authority to adopt a program similar the successful Port of Los Angeles policy and calling on Congress to enact legislation that will embolden ports across the country to follow the Los Angeles model.

In August, the U.S. District Court lifted its injunction on the Los Angeles Clean Truck Program. Their judicial reasoning can do a great deal to inform good policy in New York. The Court ruled that the program was not preempted by federal law because the Port of Los Angeles was acting in its own proprietary business interest "to sustain and promote port operations" rather than setting regulatory policy. In essence, the Port of Los Angeles was making a prudent business decision, adopting the most efficient means to mitigate air pollution that "jeopardized the Port's continued viability as a commercial enterprise" in the words of the Court.

Speaking at a Drum Major Institute event in autumn 2008, Port Authority Executive Director Christopher Ward acknowledged similar business pressures at the Ports of New York and New Jersey. Mr. Ward noted that if reducing truck pollution was not "part of the solution for the port, we will have no growth and we will end up losing the very engine that creates the jobs." In other words, our ports also have a clear proprietary interest in measures like L.A.'s employee-driver provision that create an efficient and sustainable model for reducing truck emissions.

When he addressed the Drum Major Institute, Mr. Ward also vowed to "take the lessons learned that L.A. and Long Beach have provided." Two years later, it's not clear that these lessons have been learned at our ports.

The data provided by the Coalition for Healthy Ports is powerful: the Port of Los Angeles used \$44 million in public funds to leverage private investment and get 8,500 clean trucks on the road. In New York and New Jersey, the plan is to use \$32 million in taxpayer funds to replace 700 or fewer trucks. Without commenting on how far advanced the Port Authority's program is now, it's clear that the plan going forward represents a less efficient use of public resources than we saw in Los Angeles.

The New York/New Jersey truck replacement program is less efficient because it dumps public money on top of a broken employment model rather than restructuring port operations to make the funds work effectively. As a result, we are trying to make thousands of individual low-income port truck drivers take on the burden of improving air quality rather than demanding accountability from the large companies that profit most from the operation of our ports, as Los Angeles does.

Again, the recent District Court case is illuminating. The judge notes that “the employee driver provision was designed to transfer the financial burden of administration and record keeping onto the trucking companies instead of the Port... and [to] protect the Port’s investment in clean trucks.” Yet this key portion of the Los Angeles model is not being replicated at the ports of New York and New Jersey. It is significant that this resolution specifically calls on the Port Authority to do so, noting that “the responsibility for cleaning the air near ports should belong to the trucking companies who have the financial stability to purchase and maintain newer and cleaner trucks.”

Let me close by saying that in the wake of the federal court decision, Congress’ Clean Ports Act of 2010 remains a critical piece of legislation. First, it will uphold ports’ ability to establish policies like the Clean Truck Program in their public capacity as regulators – not merely as entities that participate in the marketplace. No less significantly, enacting this law would bolster the political will of ports, like those here in New York and New Jersey, that have been timid about emulating the successful Port of Los Angeles model. The fact that this resolution calls on both Congress and the Port Authority to act is judicious.

Thank you for your time.

CLEAN AND SUSTAINABLE TRANSPORTATION COALITION

October 28, 2010

The Honorable Michael C. Nelson
Chairman
Committee on the Waterfronts
New York City Council
250 Broadway, Suite 1856
New York, New York 10007

Re: Oppose Proposed Res. No. 414-A

Dear Chairman Nelson:

On behalf of the undersigned members of the Clean and Sustainable Transportation Coalition, we urge you to **oppose** Proposed Resolution No. 414-A. The resolution calls upon Congress to pass HR 5697, the "Clean Ports Act of 2010" and for the Port of New York and New Jersey to adopt a Clean Truck Plan similar to that of the Port of Los Angeles. These two policies will not promote economic or environmental sustainability in the harbor drayage industry. Even as the proponents claim their objective is environmental and economic justice these policies are designed to force out of the industry many hard working and successful independent drivers. That's not justice. We fear that a fundamental restructuring of the harbor drayage industry could adversely impact the efficiency of moving freight through the region, leading shippers and logistics providers to consider sourcing freight through other East Coast gateways.

The undersigned members of the Clean and Sustainable Transportation Coalition represent exporters, importers, and the logistics industries and service providers that support them. The members of these state and national associations move a substantial volume of the nation's exports and imports through maritime gateways including the New York-New Jersey marine terminals and are dedicated to ensuring that the port trucking industry operates in an environmentally responsible and economically sustainable manner. Many of the undersigned groups endorsed the goals of the Port Authority's Clean Truck Program to quickly turn over the fleet of aging harbor trucks in the region and are working with the Port Authority on its implementation. In fact, some in our group have invested considerable resources to speed the switch to cleaner trucks. Industry only opposes employment requirements that ultimately have nothing to do with improving air quality but with a union's ambitions.

It is our view that a change in federal law as outlined in the Clean Ports Act of 2010 along with the so-called "employee mandate" included in the Port of Los Angeles plan will do nothing to reduce tail pipe emissions of harbor trucks. Already, many ports around the country – including the Port Authority of New York and New Jersey – have implemented or are implementing clean truck programs designed to promote the purchase of new clean equipment. In fact, the ports of Los Angeles and Long Beach achieved their truck emission reduction target two years ahead of schedule while over half of the fleet operates on engines that meet or exceed 2007 U.S. EPA emissions

guidelines. Other ports have achieved similar results without changes in federal law. Clearly, any change in federal law or mandated restructuring of the driver workforce is not needed to achieve impressive emissions reductions.

The changes in federal law detailed in the Clean Ports Act would support local mandates on the employment status of drayage drivers. Once again, the employment status of a drayage driver does not have any correlation to tail pipe emissions. Rather, such a mandate would unfairly force out of the industry many hard working independent drivers operating as small businesses that have made significant investments in "green" technologies. Many members of the undersigned associations work directly with motor carriers, truckers and logistics providers to guarantee that equipment owners, including drivers, have the economic wherewithal to operate this new equipment. These policies, if enacted, could void these investments and force independents out of business.

A fundamental restructuring of the industry would adversely impact the efficiency of moving cargo through the region. Support for the Clean Ports Act and the Los Angeles Clean Truck Program sends a strong message to shippers and others sourcing cargo through Port Authority marine terminals that the region is not dedicated to supporting the efficient movement of goods. In today's economic climate, many importers and exporters are looking to achieve significant cost savings by streamlining their supply chains to ensure that store shelves are replenished quickly, factory floors receive inputs when needed and overseas markets are reached effectively. Severe bottlenecks and cargo delays in New York-New Jersey marine terminals could force shippers and others to consider alternative East Coast gateways.

We support initiatives to reduce emissions and we stand ready to work with the Port Authority and marine terminal operators to implement the clean truck program. However, we do not believe it is appropriate for the Port Authority or any other public agency to unfairly restrict the drayage industry in the name of clean air. If enacted into law, the Clean Ports Act along with the Port of Los Angeles Clean Truck Program will do very little to advance environmental justice for the many residents of communities surrounding marine terminals in the region, while threatening the livelihood of the many independent truckers and small businesses located in the region. We welcome your interest in reducing port drayage emissions but we urge you to oppose Proposed Resolution No. 414-A.

Sincerely,

Agriculture Transportation Coalition
American Apparel and Footwear Association
American Home Furnishings Alliance
American Import Shippers Association
Express Association of America
California Trucking Association
CONNECT – Coalition of New England Companies for Trade
Express Delivery and Logistics Association (XLA)
Fashion Accessories Shippers Association (FASA)
Harbor Trucking Association
International Warehouse Logistics Association

NASSTRAC, Inc.
National Association of Waterfront Employers
National Customs Brokers and Forwarders Association of America (NCBFAA)
National Industrial Transportation League
National Retail Federation
New Jersey Retail Merchants Association
New York/ New Jersey Foreign Freight Forwarders and Brokers Association
New York Shipping Association
New York State Motor Truck Association
Pacific Coast Council of Customs Brokers & Freight Forwarders Assns. Inc
Pacific Merchant Shipping Association
Retail Industry Leaders Association
Snack Food Association
The Health & Personal Care Logistics Conference, Inc.
The Retail Council of New York State
The Waterfront Coalition
Travel Goods Association
U.S. Association of Importers of Textiles and Apparel
World Shipping Council

Statement for the Record

By

**Curtis Whalen
Executive Director**

Intermodal Motor Carriers Conference

**Of the
American Trucking Associations**

To the

Committee on Waterfronts

New York City Council

Hearing on

**Proposed Res. No. 414-A: Resolution calling upon the United
States Congress to Pass H.R. 5967**

October 28, 2010



**950 N. Glebe Road Suite 210
Arlington, VA 22203-4181**

My name is Curtis Whalen and I am the Executive Director of the Intermodal Motor Carriers Conference (IMCC) of the American Trucking Associations (ATA). The IMCC is an affiliated conference of ATA and our members provide port transportation trucking services at America's vital container port complexes including terminals in the New York New Jersey Port Authority facilities.

I very much appreciate the opportunity to provide a statement for the record on **Proposed Res. No. 414-A**. As you know, the Resolution calls upon the United States Congress to pass H.R. 5967 which amends the Federal Aviation Administration Authorization Act of 1994 (FAAAA or F4A) to “empower America’s ports to implement and enforce innovative environmental solutions for truck pollution and upon the Port Authority of New York and New Jersey to adopt a comprehensive program modeled after the Los Angeles Clean Truck Program to ensure that the Ports of New York and New Jersey are able to reach the highest standards of efficiency, sustainability and safety.”

We very much oppose the adoption of this resolution and believe it is unnecessary, counterproductive and will serve to stifle future port economic growth and job creation.

ATA is the national trade association for the trucking industry, and is a federation of affiliated state trucking associations, conferences and organizations that together have more than 37,000 motor carrier members representing every type and class of motor carrier in the country.

What this ongoing debate surrounding **F4A modification** is all about is not clean air, port efficiencies, program sustainability or operational safety referred to in the Resolution text. This debate is instead about the future of port drivers and efforts by organized labor to unionize this currently independent small business workforce. The vast majority (85% to 98%) of the trucks that currently service the Ports around the country are not in fact owned by motor carriers. The port trucks are owned and operated by **Independent Owner Operators (IOOs)** that contract with motor carriers to provide port container drayage transport services. From a national perspective, it is also important for committee members to note that IOOs routinely provide the truck tractors-power units nationwide-throughout the trucking industry – this is not a business operational characteristic unique to port drayage.

Under current law, IOOs can not be organized. But, through the use and implementation of the LA type command and control concession contract that Resolution 414-A and HR 5967 support, motor carriers wishing to remain in the port transportation - drayage business must agree to phase out the use of owner operators, hire only employee drivers, and buy-lease a new truck fleet to replace the trucks previously supplied by the IOOs. The Teamsters Union, whose national goal is to organize harbor truck drivers, is the major proponent of the POLA model. The Teamsters see a victory in Los Angeles as helping other labor-friendly port cities to implement “clean-truck plans” based on the LA

concession contract model mandating an **employee driver workforce**, which the union can thereafter organize.

When Congress passed the F4A in 1994, it expressly concluded that the then developing patchwork of state and local regulations impacting interstate motor carriers that was evolving since Congress deregulated the industry in 1980 was imposing an “unreasonable burden on interstate commerce” and “an unreasonable cost on the American consumers.” Pub. L. No. 103-305, tit. VI, § 601(a) (1). ATA believes that such a return to a patchwork of differing state and local trucking regulations which your resolution would facilitate would indeed mean a return to those unnecessary burdens and unreasonable consumer and trucking costs that Congress was indeed trying to stop.

Since passage of the *Motor Carrier Act of 1980 which deregulated the industry*, motor carrier transportation has operated under a highly competitive, open-entry business model that includes a significant number of small carriers. According to an ATA statistical analysis of motor carrier data released by the U.S. Department of Transportation, the vast majority of motor carriers in the U.S. (87.3%) operate six or fewer trucks and 95.9% of the fleets have 20 or fewer trucks. We believe that the motor carrier’s decision to utilize IOOs, employee drivers, or a combination of both should remain a free market business choice made by motor carriers and drivers, not by federal, state or local officials.

ATA initiated litigation July 28, 2008 in the U.S. District Court, Central District of Los Angeles against the Ports of Los Angeles (POLA) and Long Beach (POLB) challenging their use of mandatory Concession Contracts to implement their respective Clean Truck Programs (CTPs). Our aim then and now is not to block or hinder implementation of the truck retirement-clean air portions of these programs which are otherwise similar to the Port of New York-New Jersey’s clean truck program being implemented via a filed tariff. This tariff denies pre 1994 trucks from accessing port property after January 1, 2011 and pre 2007 trucks after January 1 2017. The Port’s approved clean truck program which has no concession contract or employee mandates has been and is being supported by our conference and we were active participants in the working group brought together by port officials that developed the consensus plan.

What we are opposing in the litigation is the use of a concession contract wherein a port grants to itself the sole discretion of selecting which otherwise federally qualified motor carriers can participate in providing port transportation services. And, within the POLA concession contract requirements, we are particularly opposing the fact that motor carriers granted concessionaire status by the port must adhere to specific employee mandates, off street parking, financial disclosure and maintenance plan requirements that we believe are unnecessary, anticompetitive and illegal.

In our lawsuit ATA specifically asserts that the POLA Concession Plan is **preempted by federal statute**. Specifically, **under 49 U.S.C. § 14501(c) (1) (aka FAAAA or F4A identified above)** a state or political subdivision of a state “may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier.” The LA Concession Plan clearly is intended to control access into the port markets and will have a major negative impact on motor carrier price, services and potentially routes which the law prohibits.

The ATA litigation also relies heavily on the United States Supreme Court's 2008 **unanimous ruling** interpreting this federal preemption provision (*Rowe v. New Hampshire Motor Transport Ass'n*, 128 S.Ct. 989, 995 (2008)). Citing language in that case, ATA asserts that laws like the port concession plans that substitute "governmental commands for 'competitive market forces' in determining the services that a motor carrier will provide" are, will and should be preempted.

Motor carriers operate most efficiently when they are able to conduct operations in a uniform and standard way from state to state, port to port and locality to locality. Allowing states and localities to disrupt those standardized business practices with a patchwork of varying, even conflicting regulations obviously would create enormous administrative problems, increase costs and increase operational inefficiencies for our industry and the other business port stakeholders and consumers that depend on the global containerized freight transportation industry.

To better understand the Pandora's box the Resolution and legislation would open, consider the magnitude of the "let the ports' set the rules" approach. According to the American Association of Port Authorities (AAPA), there are 126 public seaport agencies that have jurisdiction over 185 public ports in the U.S. Complying with the hundreds of varying local laws and regulations that the Resolution would foster would present an enormous burden on freight transportation, greatly increasing costs to companies and consumers, and potentially providing an incentive for motor carriers to restrict operations and compete in smaller areas in which they are better able to keep pace and comply with the varying local regulatory schemes potentially put in place by various ports. The attendant reduction in competition will likely produce a negative impact for consumers in terms of product choice, availability and cost. For these reasons and because of the success of port clean truck programs in Southern California and around the country, AAPA has formally adopted a position that changes in the F4A language are **Not needed** to support port efforts to address planned clean air programs.

Underscoring the fact that the F4A debate is not really about clean air, LA and Long Beach Port officials testified May 5 before the U.S. House Transportation and Infrastructure Committee detailing both their programs' impressive results of reaching the adopted clean air goal of an 80% reduction in truck emissions almost 3 years ahead of schedule! It is important to note that last October Long Beach and the ATA reached a Settlement removing them from the lawsuit based upon a new motor carrier registration process which replaced the POLB's previous Concession Contract we were opposing in court. Unlike the earlier concession contract which POLA is still attempting to use, the new POLB Registration and Agreement does not allow the port the discretion to reject an otherwise qualified motor carrier that has submitted a proper port drayage registration.

Thus, without any change in law, both ports have very successfully implemented their respective clean truck programs and over 6,500 clean '07 compliant trucks now serve their facilities. In addition, most of the new fleets were financed with private-not public or port funding; **in fact the trucking industry has actually spent almost \$600 million of its own money to finance new clean truck purchases, much more than POLA has to date invested in this clean truck project.**

Since they can not win on the facts and believe they are likely to ultimately lose in court, the Teamsters and their supporters of the Resolution and HR 5967 argue that ports need employee drivers to otherwise sustain the clean truck programs. This argument centers on the issue of driver control and responsibility, based upon unfounded claims that motor carriers are not legally responsible for the safety and equipment of the IOOs. In fact, under Federal Motor Carrier Safety Regulations (FMCSRs), **a motor carrier is equally responsible for the safety and equipment maintenance of both an owner operator driver and an employee driver.** Motor carriers have the same right to control and duty to control an owner operator's safety and equipment maintenance as they do for an employee driver. Indeed, the term independent contractor is expressly included in the definition of employee in the FMCSRs so there is absolutely no difference between motor carrier accountability under the federal law as to whether an individual is an owner operator driver or an employee driver.

Moreover, under FMCSRs motor carriers have the exact same responsibility for the safety of the driver's equipment, whether it's company-owned equipment or leased trucks from the owner operators. They have the same exact maintenance responsibility. The comprehensive set of maintenance standards in the federal regulations make motor carriers responsible to make certain that equipment standards are met -- including inspection, maintenance and making sure that the trucks they dispatch for port service are properly inspected and in compliance with regulatory requirements.

There is, however, one glaring difference between the OO and the employee driver, and that is the latter can be unionized.

As is the case in major litigation efforts, there are most often many battles fought in the overall court room - war effort, and sometimes you win, and then lose, and then appeal to the next court and such is the case with ATA v POLA. As you may know, the U.S. District Court for the Central District of California formally ruled September 14 that the Port of LA concession program is legal. The Judge specifically found that the port through its concession contract is acting as a **private business-market participant** and is **thus exempt from the law and F4A federal preemption that says that only the federal government has the authority to regulate trucking business operations.**

On September 16 ATA filed a notice of appeal challenging each of what we believe are erroneous rulings made by Judge Snyder on matters of law, and in particular her ruling on the market participant defense. We thereafter filed a motion September 24 to stay the Final Judgment issued by the Judge so as to restore the preliminary injunction previously in force - thereby preventing the Port of LA from enforcing its concession contract program which among other requirements bans the use of independent owner operator drivers - pending appeal to the 9th Circuit Court of Appeals. This motion was made on the grounds that: (1) the Court's Findings of Fact and Conclusions of Law, including the determinations with respect to the market participant doctrine, raise serious legal questions that merit a stay; (2) irreparable harm to ATA members will likely result if the injunction is lifted; (3) a denial of the stay would create disproportionately greater hardship for motor carriers than for the Los Angeles defendants; and (4) the public interest favors a stay.

The hearing before Judge Snyder on the motion was held this Monday October 25, 2010 and on Tuesday she issued a **final** ruling staying her opinion as to the owner-operator ban as we requested, which effectively stops the port from enforcing the ban during the appeal process. She also instructed ATA and the Port to seek expedited treatment from the U.S. 9th Circuit Court of Appeals, and we are confident that the court of appeals will again rule in our favor as they did last year.

In conclusion, the trucking industry supports the clean air goals of the NYNJ port's clean truck program which is currently being implemented without any changes or additions needed in federal law and with the LA type concession contract. We believe that the POLA's plan to reshape and reregulate port truck transportation to favor resource-based operations utilizing much larger trucking companies that own their trucks and use only employee drivers is not only illegal and impractical, it is based on a total lack of knowledge regarding both port and truck transportation business operations throughout the country.

We believe and assert in our litigation that the "command and control" concession plan mechanism being mandated by POLA and supported in the Resolution is not needed to support the truck retirement and replacement program and the associated clean air benefits otherwise attributable to your clean truck program.

We believe that an LA type concession program unlawfully re-regulates the port trucking industry to the detriment of motor carriers, shippers, other port stakeholders and the businesses and consumers that depend on the freight and products that move through America's port complexes.

Trucks move the vast majority of American consumer products to and from market throughout the country. In today's global economy, American businesses are competing with products produced around the world. Transportation costs are reflected in the ultimate cost of those goods and if transportation costs in the United States are inflated because of the unnecessary regulatory burdens of state and local regulation, American goods will become more costly and less competitive. A deregulated trucking industry, shaped by competition not government edict, offers the greatest opportunity to keep transportation costs low and internationally competitive, thereby supporting national and regional growth, prosperity and job creation.

Thank you.

**Testimony of William A. Nurthen, General Manager, Port Environmental and Waterways
Development Programs
The Port Authority of New York and New Jersey
Before the City Council Committee on Waterfronts
Thursday, October 28, 2010**

Chairman Michael Nelson and members of the Committee on Waterfronts. I would like to thank you for the opportunity to submit testimony on behalf of the important issues you are considering today to better inform you of the Port Authority of New York and New Jersey's longstanding commitment to the environment.

As you may know, the Port Authority, working with its partners at the New York City Mayor's Office of Sustainability, the New York State Department of Environmental Conservation, the New York City Economic Development Corporation, the New Jersey Department of Environmental Protection, the New York Shipping Association, the US Environmental Protection Agency Region 2, and the Cities of Newark, Bayonne, Elizabeth and Jersey City, has developed a Clean Air Strategy for the Port of New York and New Jersey. The Clean Air Strategy provides an ambitious agenda to reduce harmful pollutants caused by all port operations, including diesel emissions resulting from the thousands of trucks that call on the port each day.

Two Clean Air Strategy initiatives specifically related to port trucks are the Regional Truck Replacement Program and the Truck Phase Out Plan.

The Regional Truck Replacement Program (TRP), as a first step, is designed to remove pre-1994 trucks – and the pollutants they emit – from the port and the surrounding communities. We estimate that there are more than 600 trucks that regularly call on the port that fit into this category, and we have invested \$21 million of Port Authority funds – along with a \$7 million U.S. EPA grant – to assist these truckers with the purchase of a new truck.

Our program provides trucking companies and independent owner operators with the opportunity to apply for grants and acquire financing to replace their pre-1994 model year drayage trucks with newer vehicles equipped with model year engines 2004 or later, which generate less emissions and have greater fuel efficiency. Eligible applicants receive a grant for up to 25 percent of the purchase price of the newer truck and low-interest financing at 5.25 percent for the remaining 75 percent of the replacement truck cost.

Since the program was launched a few months ago, we have seen considerable interest in the trucking community in purchasing a new truck. The Truck Replacement Program will eventually replace additional older trucks model year 1994 through 2003 in future phases. Anticipated emissions reductions from the TRP are 1,675 tons/year of Green House Gas (GHG); 118 tons/year of Nitrogen Oxides (NOx); and 14 tons/years of Particulate Matter (PM).

To further reduce diesel truck emissions as well as improve health and safety, the Port Authority has also implemented the Truck Phase Out Plan. Starting January 1, 2011, port drayage trucks equipped with engines Model Year 1993 and older will be denied access to the Port Authority's

marine terminals. In addition, starting January 1, 2017, only trucks equipped with engines that meet or exceed Model Year 2007 federal emission standards will be allowed access to the Port Authority's marine terminals.

The Truck Phase Out Plan was developed by a Truck Working Group, which was co-chaired by the Port Authority and the Natural Resources Defense Council (NRDC), and composed of representatives from the NYC Mayors Office of Sustainability, EPA Region 2, New York and New Jersey state regulatory agencies, New York Shipping Association, the Teamsters, the American Trucking Association, the Association of Bi-State Motor Carriers, the NJ Motor Truck Association, and environmental and community groups such as the Coalition for Healthy Ports. The Truck Working Group evaluated various strategies before achieving consensus on the final Truck Phase Out Plan, which will result in emissions reductions of 391 tons/year of GHG; 290 tons/year of NOx; and 9 tons/years of PM.

In addition to these two truck emission reduction programs, the Port Authority has several other Clean Air Strategy initiatives already underway.

On July 1, 2010, the Port Authority launched the Ocean-going Vessel Low-sulfur Fuel Incentive Program (Program). Under this Program, the Port Authority reimburses operators of ocean-going vessels that call at Port Authority marine terminals up to 50 percent of the difference in cost between the high-sulfur residual fuel they now utilize and the low-sulfur fuel they would agree to use in their main and auxiliary engines. Qualifying vessels would also have to participate in a voluntary vessel speed reduction program while transiting in and out of the harbor. Calculated emission reductions for this program are 1362 ton/year for GHG; 76 tons/year of NOx; and 67 tons per year of PM.

In addition, last fall, the Port Authority launched the Cargo-handling Equipment Fleet Modernization Incentive Program. This \$2.24 million program reimburses Port Authority tenants 20 percent of the costs to replace old cargo-handling equipment with new equipment that meets federal on-road air emission standards or the most recent off-road emission standards. In 2010, the New York Container Terminal at Howland Hook on Staten Island has led the way, using nearly \$400,000 in Port Authority funds toward the purchase of almost \$2 million in new, cleaner equipment. Calculated emission reductions for this program are 68 tons/years of NOx and 4 tons/year of PM.

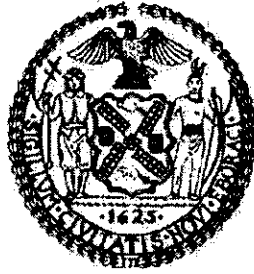
Furthermore, in August of this year, the Port Authority Board of Commissioners authorized the investment of \$15 million to install a shore power capability at the Brooklyn Cruise Terminal. The Port Authority also received a \$2.8 million EPA grant for this project, which will enable Cruise vessels to 'plug in' while at berth. In addition, Carnival Cruise Line has agreed to convert vessels that visit Brooklyn to receive this power at a cost of over \$1 million per vessel. This project will result in annual reductions of 1,394 tons of GHG; 89.3 tons of NOx; 6.1 tons of PM, and generate over \$8.9 million in health effect benefits per year for the people of Brooklyn.

Finally, the Port Authority continues to advance our investments in rail at our ports – a key part of making our port system environmentally sustainable yet also economically competitive. The growth of our ExpressRail system, the planning and investments in the Cross Harbor rail system,

all contribute toward a more integrated and efficient goods movement system that will ultimately have less impact on the environment.

Taking these programs together, we believe the Port Authority has made and will continue to make the environment and air quality in and around our ports a priority. Our ports are absolutely vital to this region as a job engine and as a critical gateway to making sure the public gets everyday products when they need them, at a price they can afford and with as minimal environmental impact as possible.

Thank you for the opportunity to provide you with an overview of the Port Authority's Truck Replacement Program and Phase Out Plan, as well as our other critical air emission reduction initiatives.



David Bragdon
Director of Long-Term Planning and Sustainability
City of New York

At the New York City Council
Committee on Waterfronts
Respecting Truck Pollution at New York City Ports

October 28, 2010

Good afternoon, Council Member Nelson and members of the Committee. I am David Bragdon, Director of the Mayor's Office of Long Term Planning and Sustainability. Thank you for the opportunity to testify today in support of City Council Resolution 414, which calls upon the United States Congress to pass H.R. 5967. H.R. 5967 in turn, would update the Federal Motor Carrier statute in the Federal Aviation Administration Authorization Act of 1994 to empower state and local governments to implement and enforce innovative environmental solutions for truck pollution at our ports.

In PlaNYC, the City set the goal of achieving the cleanest air of any large American city. Since then, we have made progress in measuring air quality, regulating emissions from school buses and for-hire vehicles, and reducing pollution from ferries, private trucks and construction vehicles. Many of these actions have been done in partnership with the New York City Council, including the passage of Introduction 194-A by the City Council this summer, which lowers the sulfur content of No. 4 heating oil and requires a 2 percent biodiesel blend in heating oil. Increasing the use of alternative fuels is an important component of PlaNYC's goals to reduce greenhouse gas emissions, improve local air quality, and diversify our energy supply.

While trucks at the Port of New York and New Jersey make up less than 4 percent of all trucks and less than 1 percent of all vehicles on the regional roadways, for the neighborhoods immediately adjacent to Port operations, truck emissions have a significant impact on local air quality and public health. In working to reduce port emissions, the City has encountered several challenges including a limited ability to directly regulate maritime and port activities. Our goal is to work with our partners in government and other stakeholders to reduce emissions from the ships and trucks that use our ports. Due to the complex regulatory structure governing the port, much of this effort can be accomplished only in collaboration with our colleagues at the Port Authority of New York and New Jersey and the US Environmental Protection Agency.

In PlaNYC, the City recognized the need to work with the Port Authority to develop a clean air strategy for its port facilities. Over the past three years the Mayor's Office, working with the NYC Economic Development Corporation and the NYC Department of Transportation, the Port Authority, the EPA, the States of New York and New Jersey, and industry participated in an unprecedented partnership to produce an actionable and transparent plan for reducing maritime emissions. In October 2009, the Port Authority released its Clean Air Strategy. The strategy adopts voluntary measures of the parties to reduce greenhouse gas emissions from port activities by 5 percent a year and criteria pollutants such as particulate matter by 3 percent a year. As a 10-year strategy, this equates to a 30 percent decrease in criteria pollutants and a 50 percent decrease in greenhouse gas emissions from baseline 2006 levels despite any port growth over the next ten years.

Through the City's leases with maritime industries and businesses that rely on trucks to move their goods, the City has also worked to encourage more fuel-efficient and less-polluting vehicles. For example, the NYCEDC negotiated a mandate in its lease with Phoenix Beverages at Pier 11 Red Hook to convert its entire fleet of 80 trucks to Compressed Natural Gas within seven years. The conversion process began this summer and is expected to result in two truck conversions per month.

These actions will help reduce emissions and improve air quality in the communities around the port; however, increasing the ability of state and local governments—including the Port Authority of New York and New Jersey—to develop local strategies in collaboration with stakeholders would enable us to do more to reduce the environmental impact of our port activities.

The importance of our port system to the City's economy has made it essential that we find ways to reduce emissions from port operations and improve the health of surrounding communities so that we are not lead to the false choice between economic development and environmental sustainability. The Port of New York and New Jersey is a mainstay of the region's economy employing 269,000 people, generating \$12 billion dollars in wages and \$2 billion dollars in tax revenue. In New York City alone, the Port employs 32,000 people who earn \$2.1 billion in wages.

A green supply chain requires that cargo is brought as close to the consumer by water or rail, then the "last mile" by truck. Optimizing the green aspects of each mode will result in the emission of fewer primary pollutants and greenhouse gases, goals that are embodied in PlaNYC. At the same time, as with all of our efforts in PlaNYC, it is important that we enact programs in a cost effective manner and find ways to support existing businesses while upgrading our infrastructure and reducing emissions.

Developing location-specific strategies will give cities the flexibility they need to work with their many partners as they seek to reduce emissions from their port facilities. I look forward to working with you to ensure that our maritime infrastructure remains competitive and environmentally sustainable.

I would be happy to answer any questions you have at this time.

**Fred Potter Testimony
NYC Waterfront Committee
October 28, 2010**

Good afternoon members of the New York City Council Waterfront Committee. Thank you for inviting me to speak to you today. My name is Fred Potter and I am the Director of the International Brotherhood of Teamsters Port Division and the President of Teamsters Local Union 469 in Hazlet, New Jersey.

As the International's Port Division Director, I am very familiar with the numerous efforts at cleaning up the pollution from port trucking that are being tried around the country. You've already heard from Amy Traub at the Drum Major Institute about some of the successes with the Port of Los Angeles' Clean Truck Program.

But today the message we are sending is for the Port Authority. NY residents are suffering from the harmful effects of diesel pollution. And port truck drivers in particular are suffering from the health consequences of dirty trucks.

I have been to ports all over the country – from New York to Seattle to Oakland and Long Beach. I have spoken to port truckers in all of these cities. I have spent time with families that live in communities next to giant port complexes. I have worked with environmentalists to find solutions to the problem of port pollution. I have even testified to Congress about what I have found.

And now I am here to tell you what I've learned.

First, I have learned that we must replace old, dirty rigs with fleets of new clean trucks. The technology exists and people are desperate for us to implement this technology. Second, I have found many clean truck programs at our country's ports to be inadequate – both in terms of the environmental achievements and in terms of what bad programs do to port truck drivers.

In Oakland, for example, they established a truck ban at the beginning of this year. They provided financing for individual truck drivers to assist them with the cost of retrofits on their trucks. And according to a survey by the Public Welfare Foundation, 25% of the truck drivers have since filed for bankruptcy, lost their homes to foreclosure or been evicted.

And unless the Port Authority scraps their current plan truck drivers here in New York and New Jersey will end up in a similarly disturbing situation. Under no circumstances should we expect low-income workers to take out large loans in order to keep their jobs and then expect that it will not lead to financial ruin.

There is only one way to get the clean trucks we need without putting hard working port truckers and their families onto the streets, and that is to change the system of worker

misclassification that keeps port truckers in poverty and forces them to own and maintain their own trucks – the very tools that keep our ports running.

The only effective model is the EPA-award winning LA Clean Truck Program which has put more 8,500 clean trucks into service at the Port of Los Angeles and has begun to re-structure the system of port trucking so that drivers are classified as employees, not “independent contractors.”

On behalf of the Teamsters and the 7,000 port truck drivers at the ports of New York and New Jersey I want to thank this body for your leadership on this issue. We are here today to support New York City Council Resolution 414 which calls on Congress to pass the Clean Ports Act of 2010, and more importantly calls on the Port Authority to enact a comprehensive LA-style Clean Truck Program.

JOINT COUNCIL No.16

INTERNATIONAL BROTHERHOOD OF TEAMSTERS



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George Miranda, President
International Brotherhood of Teamsters Joint Council 16
New York City Council Waterfront Committee
October 28, 2010

Thank you Chairman Nelson, Council Member Lander and members of the Waterfront Committee for the opportunity to speak today. I am George Miranda, President of Teamsters Joint Council 16, representing 32 unions and over 120,000 members in and around New York City. The Teamsters are proud members of the Coalition for Healthy Ports working alongside labor, community, and environmental advocates in strong support of the passage of Resolution 414.

We are also here today in solidarity with the over 7,000 workers who haul containers to and from the Ports of New York and New Jersey. As you may know, effective January 1st, 2011, our Port Authority will no longer allow pre-1994 trucks onto port property. Although we welcome the effort to reduce toxic diesel pollution from old port trucks, the plan as it stands cannot address the fundamental market failures of the port trucking industry or the severe economic and environmental consequences they cause.

And as you will hear from Raul, Kirby and Victor today, banning these trucks will place a severe economic burden on port truck drivers who average \$10 to \$11 an hour and lack a safety net, rather than engage the giant shipping companies and trucking outfits that profit from goods movement.

According to Rutgers University professor David Bensman, port drivers "are on the job five days a week, from ten to twelve hours a day, earning an average annual income of \$28,000. As 'independent contractors,' port truck drivers do not receive health care or any contributions to a retirement fund. Independent contractors are responsible for owning and maintaining their own trucks, which includes lease payments, fuel costs, tire repairs, truck maintenance, road licenses, taxes, insurance, tolls and traffic fines."

For too long truck drivers at the ports have been forced to endure unfriendly working conditions and wages that make it incredibly difficult to provide for their families. Fortunately there is a solution that can help us fix the pollution problem and help fix the economics of the hardworking men and women at the port.

You will hear today from economists, drivers, environmentalists, environmental justice advocates, labor leaders and community groups and they will all be stressing three main points:

First, that we all want clean trucks to serve the Ports of New York and New Jersey. Second there is a proven successful example in LA for how to bring good jobs and clean air to the port trucking industry and finally that we should bring that example here to the New York New Jersey region.

New York City Council Resolution 414 calls on Congress to enact H.R. 5967 which makes clear Ports authority to enact programs like the LA Clean Truck Program and calls on the Port Authority to do so. The International Brotherhood of Teamsters supports the passage of Resolution 414 and we join with the NYC Council in calling on the Port Authority to enact a Clean Truck Program for the New York and New Jersey region.

Thank you.



**Testimony of Julia Stalder
Director of Civic Engagement
New York League of Conservation Voters**

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Committee on Waterfronts

New York City Council

October 28, 2010

Re: Resolution No. 414-A

Good afternoon Chairman Nelson and members of the Committee on Waterfronts. Thank you for giving me the opportunity to present our position on this important legislation.

My name is Julia Stalder, and I am the Director of Civic Engagement for the New York League of Conservation Voters (NYLCV). We are an environmental advocacy and education organization. Today, I am here to express our support for Resolution 414-A. The policy recommendations in this resolution represent an important step toward greening New York City's ports and improving our city's air quality.

Currently, New York City's ability to control air pollution at its own ports is severely hindered by federal law. The prohibition on regulating trucking at ports for environmental reasons severely constrains our city's ability to regulate truck diesel emissions, a significant source of pollution in and around our ports.

With the constant stream of dirty diesel trucks in port-adjacent areas, diesel pollution is having serious health effects on residents near area ports. The numbers are simply staggering. For 2010 alone, premature deaths from diesel pollution are expected to reach 3,100 for the metro area. Additionally, there were nearly 50,000 asthma attacks attributed to diesel pollution for the metro area in 2010.

The proposals contained in Resolution 414-A represent a policy imperative for New York City. First, Resolution 414-A calls upon the United States Congress to pass The Clean Ports Act of 2010, H.R. 5967. This would amend the Federal Aviation Administration Authorization Act, thereby allowing states and municipalities to regulate trucking at ports in efforts to reduce environmental pollution.

Second, Resolution 414-A calls on the Port Authority of New York & New Jersey to adopt a Clean Truck Program similar to the program currently in use in Los Angeles.

(over)

The Los Angeles Clean Truck Program, implemented in 2008, has already proven to be a resounding success. After only two years, Los Angeles has already reduced truck-related port emissions by over eighty percent, drastically improving air quality in and around the port. There are now 7,500 clean trucks operating at the Port of Los Angeles.

Los Angeles has clearly demonstrated the feasibility of implementing a large-scale Clean Trucks Program. A similar program in New York City could drastically improve air quality and public health, while reducing the public health costs associated with diesel truck pollution.

For these reasons, the New York League of Conservation Voters strongly supports the policy objectives of Resolution 414-A and encourages their swift implementation.

**New York Jobs with Justice and Urban Agenda
Joint Testimony before the New York City Council Waterfronts Committee
October 28, 2010**

I would like to thank the Chairman and Members of the Waterfront Committee for the opportunity to speak today. My name is Jameelah Muhammad, Organizer at New York Jobs with Justice and Urban Agenda. New York Jobs with Justice and Urban Agenda are both permanent coalitions of community and worker organizations. We work in strategic alliance to achieve a shared mission of creating a more just, sustainable and prosperous New York for all New Yorkers.

I am here today to testify on behalf of Urban Agenda and NY Jobs with Justice to urge City Council to support Resolution 414 and to advocate for a Clean Trucks Program for good green jobs and healthier ports in the city of New York. We are also urging the Port Authority to address the significant problems with the current Truck Replacement Plan which intends to address the environmental impact of the truck fleets, but does very little for improving wages and working conditions of truck drivers.

New York City has some of the highest incidents of income inequality and disparities in the world. A recent report has shown that, New York City's Income Inequality index is greater than Mexico, Sri Lanka, and France.¹ The economic recession has had an incredibly devastating impact on New York City's poorest and lowest income residents. But there are things that can be done to change this and create a more sustainable economy for all New Yorkers. The passage of Clean Ports Truck Program for NY/NJ Ports could be an opportunity to improve working and living conditions for many New Yorkers.

In 2009, Urban Agenda launched the Green Collar Jobs Roadmap, a blueprint for how New York City could transition to a more sustainable economy. The roadmap outlined recommendations for developing a plan for the transformation of the current transportation system and how the necessary upgrades and retrofits to vehicles used in the city could dramatically reduce pollution. Without the execution of a comprehensive clean truck program in the region there will be adverse impacts on the environment, but what is equally troubling is the negative consequences in continuing an economically and socially unsustainable system for operating and maintaining trucks.

We are not only advocating today for cleaner, greener communities, but also for communities that are able to thrive economically. This means removing the financial debt and burden that currently exists for truck drivers when they operate as independent contractors, to provide a better mechanism for truck financing instead of the current proposed loan system, and requiring shared responsibilities between employer and employee when it comes to improving labor conditions. When the burden of maintaining trucks is the sole responsibility of the truck driver it proves to be an unsustainable situation for communities and businesses. A recent survey found that 25% of the

¹ <http://www.nyccah.org/node/378>

port truckers under a truck program where they are responsible for the retrofits and maintenance of their trucks, have declared bankruptcy and have suffered from evictions and home foreclosure.²

In light of recent legal precedents for the Los Angeles Clean Truck Program, we find that the NJ/NY Ports do have the authority and responsibility to adopt a Clean Truck Program and would be making a significant contribution to workers, communities, and businesses by doing so. Urban Agenda and New York Jobs with Justice strongly encourages that City Council pass a resolution supporting a Clean Trucks Program for the NY/NJ region and support federal legislation that would authorize the NY/NJ Port Authority to make such changes. Workers and their communities deserve the opportunity to be truly environmentally and economically sustainable and we believe that this program could be of great benefit to many of our partners and stakeholders. Thank you.

² Coalition for Healthy Ports: <http://www.prnewswire.com/news-releases/statement-from-amy-goldsmith-executive-director-of-the-new-jersey-environmental-federation-on-behalf-of-the-coalition-for-healthy-ports-87226097.html>

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Name: Sobdad Gantambode

Address: 166a 22nd St, Bklyn, NY

I represent: UPROSE

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Name: Amy Goldsmith

Address: 1002 Ocean Ave. Belmar NJ 07719

I represent: NJ Environmental Federation, Coalition for Healthy Ports

Address: _____

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Name: Jameelah Muhammad

Address: 514 W. 214th, NY NY 10034

I represent: NY Jobs w/ Justice and Urban Agenda

Address: 50 Broadway, 16th floor, NY NY

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Date: 10/28/2010

(PLEASE PRINT)

Name: Fred Potter, 1BT Port Division Director

Address: 3400 Highway 35 So Hazlet NJ 07730

I represent: International Brotherhood of Teamsters

Address: _____

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I intend to appear and speak on Int. No. _____ Res. No. 414A

in favor in opposition

Date: 10/25/2010

(PLEASE PRINT)

Name: Rick Luftglass

Address: 492 Henry Street, #2M

I represent: Brooklyn Community Board 6

Address: 250 Baltic Street, Brooklyn 11231

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 414

in favor in opposition

Date: 10/28/10

(PLEASE PRINT)

Name: Julia Halder

Address: 30 Broad Street, NY, NY

I represent: New York League of Conservation Voters

Address: 30 Broad Street NY, NY

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 414

in favor in opposition

Date: 10/28/2010

(PLEASE PRINT)

Name: Raul De la Cruz + Kirby Reyes +

Address: Victor Martino

I represent: Port Drivers

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 414a

in favor in opposition

Date: 10/28/2010

(PLEASE PRINT)

Name: Halt Yalen

Address: 70 Hamilton Ave

I represent: ASI

Address: 70 Hamilton Ave, NY 11231

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 414

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: George Miranda, President

Address: _____

I represent: Joint Council 16 Trampsters

Address: _____

◆ Please complete this card and return to the Sergeant-at-Arms ◆

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Becky Schneider

Address: 241 water st

I represent: Metropolitan Waterfront Alliance

Address: _____

◆ Please complete this card and return to the Sergeant-at-Arms ◆

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
 in favor in opposition

Date: _____

Name: DAVID BRAGDON, DIRECTOR (PLEASE PRINT)

Address: _____

I represent: LONG-term Planning + Sustainability

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 2 Res. No. 414-A
 in favor in opposition

Date: _____

Name: Andrew Genn (PLEASE PRINT)

Address: 110 William St

I represent: NYC Econ Dev Corp

Address: _____

Please complete this card and return to the Sergeant-at-Arms