

Case Study: American Trucking v. LA

By Sean M. Sherlock

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Developers seeking entitlement for light industrial distribution facilities are increasingly faced with demands by citizen activists and the South Coast Air Quality Management District to adopt a range of measures designed to squeeze older diesel trucks off the road. Many of the demands focus on measures adopted by the Port of Los Angeles under its Clean Trucks Program.

On Sept. 26, 2011, the Ninth Circuit Court of Appeals struck down one such provision, holding that it is preempted by the Federal Aviation Administration Authorization Act.

Developers and their environmental planning consultants need to be aware of this decision and its implications when addressing demands for such measures.

American Trucking Associations Inc. v. City of Los Angeles, et al.

In the mid-1990s, the Port of Los Angeles developed plans to expand its cargo terminal facilities to accommodate more and larger ships. The plans ran into a buzz saw of public opposition and litigation, much of it complaining about the impacts of increased diesel exhaust and other air pollutants that would result from the expansion.

In 2006, the port adopted a Clean Air Action Plan, which included a Clean Trucks Program “designed to reduce emissions from the heavy duty trucks involved in port drayage to improve the health of people living in the communities surrounding the [port].” Under the Clean Trucks Program, the port initially adopted various measures designed to phase out the use of older trucks, and admit to the port only newer, cleaner trucks. Those initial measures proved infeasible, and the port modified the program by requiring that each of the drayage truck providers enter into a concession agreement with the port, requiring, among other things, the following:

- 1) Concessionaires must transition over five years to using 100-percent employee drivers, rather than independent contractor drivers.
- 2) Concessionaires must submit to the port an off-street parking plan to ensure that their trucks are in compliance with local municipal parking regulations.
- 3) Concessionaires must maintain their trucks in accordance with the manufacturers’ specifications.
- 4) Concessionaires must post placards on their vehicles while entering, leaving, or on port property, providing members of the public a phone number with which to report concerns about emissions or safety.
- 5) Concessionaires must demonstrate to the port that they have the financial capacity to comply with the concession agreement.

Plaintiff, the American Trucking Associations, sued the port in federal district court, challenging the concession agreement as preempted by federal law. The trial court held that the concession agreement was not preempted by federal law. On appeal, the Ninth Circuit reversed as to the provision requiring 100-percent employee drivers, but affirmed as to the other four.

The Federal Aviation Administration Authorization Act (“FAAA”)

Despite what its name implies, the FAAA was enacted by Congress in 1994 to prevent states from undermining federal deregulation of interstate trucking. Thus, when a state or local government attempts to regulate interstate trucking, its action may be preempted by the FAAA. Whether a state or local requirement is preempted by the FAAA is a three-part inquiry:

- 1) Whether the measure “relate[s] to a price, route, or service of a motor carrier.” If not, there is no preemption.

2) Whether the measure was enacted by the state in its regulatory capacity, rather than its proprietary capacity. If the latter, there is no preemption.

3) Whether the measure is covered by any of the FAAA's express exemptions, including the exemption provided for states to regulate the safety of motor vehicles within their jurisdiction.

Evaluation of the Concession Agreement Provisions Under the FAAA

With regard to the employee-driver requirement of the concession agreement, the Ninth Circuit and the parties accepted the district court's finding that the requirement relates to rates, routes or services of a motor carrier, and that it is not covered by any FAAA exemption, including the safety exemption. The focus, therefore, was whether the requirement was adopted by the port in its capacity as a market participant.

The Ninth Circuit found that it was not. Although the port advanced market-based reasons for wanting the driver-employee requirement (i.e., ensuring the trucks are owned and operated by entities with the capacity to maintain them, and ease of administration), the court found another of the port's objectives (ensuring higher wages for drivers) to be regulatory in nature.

On balance, the regulatory interest outweighed the market participant interests, because the requirement sought "to impact third party behavior unrelated to the performance of the concessionaire's obligations to the Port. ... While the Port may impose conditions on licensed motor carriers seeking to operate on Port property, it cannot extend those conditions to the contractual relationships between motor carriers and third parties." Accordingly, the port's attempt

to phase out independent contract truckers was held to violate federal law.

The remaining four concession agreement provisions were upheld, either because they did not regulate prices, routes or services, were enacted in furtherance of the port's interest as a market participant, or were squarely safety-related.

Implications for Development of Distribution Facilities

This case provides valuable guidance for developers of light industrial distribution facilities in Southern California, and their environmental planning consultants. New distribution projects are now commonly confronted with comment letters and demands to adopt a range of measures designed to phase out older diesel engine trucks.

Among common demands: (1) Do not permit any truck to enter the facility unless it complies with California Air Resources Board 2010 diesel engine standards; and (2) do not permit any truck to enter the facility unless its operator is a U.S. Environmental Protection Agency SmartWay partner (see www.epa.gov/smartwaylogistics).

These types of measures may run afoul of the FAAA under the Ninth Circuit's opinion in *American Trucking*, because they clearly relate to "prices, routes, and services" of interstate trucking, and are not covered by any FAAA exclusion. Although project opponents would argue that reduction of diesel exhaust is a "safety" issue, bringing such measures within the FAAA's safety exclusion, the Ninth Circuit in *American Trucking* distinguished between safety and environmental concerns, recognizing the latter as being a regulatory interest.

Accordingly, when a developer is confronted with proposed conditions on truck use, such conditions should be carefully evaluated under the *American Trucking* case.



Sean M. Sherlock
714.427.7036
ssherlock@swlaw.com

Sean Sherlock's practice is concentrated in environmental and land use matters, and in commercial litigation.

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