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November 2, 2021

Governor Gavin Newsom
1303 10th Street, Suite 1173
Sacramento, CA 95814

RE: Executive Order N-19-21 - **Enforcement of B & P Code Sec. 22928**

Dear Governor Newsom,

The *Western States Trucking Association* (WSTA) is submitting this letter in response to your Executive Order N-19-21 directing state agencies to identify means to reduce the congestion being experienced at California ports.

The WSTA is the oldest independent, non-aligned, non-profit trucking association in the U.S. Originally founded and incorporated in California in 1941, the associations members are engaged in virtually every mode of transportation. From construction trucking, cross-border, general freight and related to your EO – port drayage. We have a subdivision, *West State Alliance* that has operated at the Port of Oakland since 2004.

Many media reports on the dysfunction being faced at California ports are echoing national issues from other groups that are unrelated to the crisis our members are facing. Our members are the motor carriers who are engaged in port drayage in California and their input towards resolving the crisis should be considered.

As an example, reports blaming a “driver shortage” are nonsense. There are plenty of drivers to service California ports, in fact, our members are laying off employee drivers and dismissing independent contractors due to their inability to make the “turns” their operations were designed to handle. Going from 3-5 daily trips pre-COVID to barely able to make two trips is their current reality.

There are a myriad of reasons impacting this inefficient use of truckers’ time (which is limited to a 14-hour day under federal regulations). The amount of time truckers take simply to in-gate at a port terminal is often measured in hours. Cellular geofenced based truck turn time data previously used at the Port of Oakland disproved terminal operator claims of significantly less time involved in a turn. Terminal operators control their gates and appointments are mandatory – truckers don’t control this.

While appointment systems when functioning properly can aid port efficiency, that is often not the case. Add to this dysfunction, the inability to return empty containers or even worse, a trucker waiting in line with an appointment trying to return an empty container being turned away at the gate after hours of waiting (because of a unilateral terminal decision to quit taking a specific steamship lines containers). The trucker is then unable to haul a single loaded container during their work shift since they must have a “dual transaction” which means exchanging an empty for loaded container. The cost of this inefficiency is being borne by the trucking companies and independent contractors.

To add insult to injury, truckers are being billed demurrage and per diem fees by terminals and shiplines for containers that they bear no fault for the delays in getting them on the port or off the port in California. They are viewed by terminal operators and steamship lines as a convenient “ATM” to bolster their profits.

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This practice is a form of economic coercion because if the trucking company doesn't pay, they are banned from terminal access.

On top of those fees, trucking companies are charged daily fees for the use of chassis and when a terminal limits container returns, truckers again bear the cost for delays in returning chassis and the cost associated with storing containers.

News outlets are reporting record profits¹ being made by the steamship lines. A significant portion of the profits are being made off the dysfunction they alone are responsible for creating. Those responsible for the crisis should not be allowed to profit from their actions. They have no financial incentive to repair their inefficient business practices.

Fortunately, California has a law that if enforced by the state could do more to correct the current dysfunction than many of the discussed solutions to the port logistics crisis. That law is SB 45 (California Business and Professions Code – Section 22928). Importantly, the law “levels the playing field” between small trucking companies and large multinational corporations by stating:

(b) An intermodal marine equipment provider or intermodal marine terminal operator shall not impose per diem, detention, or demurrage charges on an intermodal motor carrier relative to transactions involving cargo shipped by intermodal transport under any of the following circumstances:

The circumstances described in the law are numerous and most directly relate to the current state of dysfunction at California ports.

While it seems the likely strategy being adopted within the state will involve off-port storage of containers in order to more quickly unload ships, that strategy will not in the long term resolve the issues our members face as those ships will hurry back across the Pacific to reload and return to our ports in the same numbers. It's merely a temporary fix, not a long-term solution to a problem that has been growing for years.

We ask that you direct the relevant state agencies to enforce this law. If those profiting from their own created dysfunction are denied the ability to financially benefit from their own actions, they will have every reason to improve the efficiency and throughput at our ports and a growing crisis can be partly resolved.

Sincerely,



Joe Rajkovacz
Director of Governmental Affairs
Western States Trucking Association

¹ ONE Reports \$4 Billion Quarterly Profit and Expects \$12 Billion For the Year. gCaptain, Oct. 29, 2021.

<https://gcaptain.com/one-reports-4-billion-quarterly-profit-and-expects-12-billion-for-the-year/>

A.P. Moller - Maersk reports record earnings and continued growth momentum in logistics in Q2

<https://www.maersk.com/news/articles/2021/08/06/maersk-reports-record-earnings-in-q2>