

January 18, 2023

The Honorable Michael Regan Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

**Docket ID No. EPA-HQ-OAR-2022-0874**

Dear Administrator Regan,

America's seaports, represented by the American Association of Port Authorities (AAPA), are the center of our nation's trade and transportation systems. International trade through seaports accounts for over a quarter of the U.S. gross domestic product (GDP). Seaports handle approximately \$6 billion worth of import and export goods daily, generate nearly 31 million jobs, and provide more than \$378 billion annually in federal, state, and local tax revenues. AAPA is thrilled by the availability of the new Grants to Reduce Air Pollution at Ports program. The \$3 billion made available by the Inflation Reduction Act (IRA) will go a long way towards assisting port authorities in purchasing and installing emissions reduction technologies and practices. We are grateful for the chance to comment on the establishment of this grant program.

**Necessary Project Eligibilities for a Successful Program**

As multimodal hubs, ports utilize a broad array of equipment types to service marine vessels, trucks, and rail, all while moving cargo of all types and passengers on cruises and ferries. This diversity of operations will certainly be reflected in the applications EPA receives for this program. It is vital that this program be established with broad eligibility for projects of many types and not be restricted to simply cargo-handling equipment.

In 2022, AAPA conducted a survey of our members, asking what types of emissions reduction projects they would pursue if federal funding were available. Now that federal funding is available, the results are instructive. We found the project types with the most interest are electric cargo-handling equipment, shore power for vessels at berth, electric grid infrastructure, and hydrogen energy infrastructure. In addition to these most common projects, ports are also interested in funding for microgrids, LED lighting, harbor craft electrification and charging, locomotive electrification, building facility electrification, solar panel installation, and power for refrigerated (or "reefer") containers (see a summary of survey at the conclusion of this comment).

Electric grid infrastructure stands out as the common denominator. Adding an electric gantry crane, electric drayage truck, shore power-compatible berth, or hydrogen production facility is not as simple as plugging in a new appliance to a wall outlet. Ports are massive consumers of



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energy, often using electricity focused at peak hours of the day. Any addition of electric equipment will come with necessary grid upgrades, including charging stations, transmission lines, substations, and more. In addition to applications for zero-emission cargo-handling equipment, shore power systems, etc., it is critical that EPA accept applications to this grant program for electric grid upgrades. Grants should not only be made allowable for construction of new electric grid assets, but enhancements, refurbishments, and replacements of existing grid assets like transmission lines and substations. We believe this allowance was taken into account in the IRA with the inclusion of “[t]he term ‘zero-emission port equipment or technology’ means human-operated equipment or human-maintained technology.” The inclusion of “human-maintained” as a separate term from “human-operated” should be interpreted as technology that does not need to be operated as a vehicle, but rather is a fixed asset like electric grid and shore power systems, operating under the maintenance of people.

When it comes to planning, permitting, and climate action plans, it is critical that EPA exercise flexibility when granting awards. For example, some ports have already completed climate action plans, but need funding to update those plans for new equipment, update existing master plans, or create energy usage plans to incorporate zero-emission technology. While the definition of “qualified climate action plan” is defined in the IRA, the legislation also states that grant funds can be spent “to conduct any relevant planning or permitting in connection with the purchase or installation of such zero-emission port equipment or technology.” This language gives EPA the flexibility to award ports planning money no matter what stage they are in the planning process. Ports that have already developed plans should not be forced to rewrite those plans unnecessarily. Rather, planning grant funds should be used to aid ports in their emission mitigation development, taking into account work they have already begun. Ports should also be allowed to use planning grants to purchase and implement emissions monitoring technologies. This equipment will allow ports to make decisions about how best to implement emissions mitigation programs.

In addition, we believe it would be prudent of EPA to not divide planning and project funding into separate rounds of awards but rather allow ports to apply for planning and project awards in the same cycles. While some ports will certainly apply only for funds for planning purposes, most have projects they are ready to begin work on. Many projects are already underway but have been slowed down or diminished in scope due to inflation. We also hope that EPA will consider applications that combine aspects of planning and asset acquisition/construction.

### **Domestic Preference Requirements**

As EPA considers implementation of this new grant program, limiting domestic preference requirements will be a key factor in the program’s ability to achieve its goals and the goals of the Biden Administration. The driving force behind the creation of this program and its first stated goal is to “purchase or install zero-emission port equipment or technology.” However, large, electrified cargo handling equipment is not manufactured in the U.S. and strict



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enforcement of Buy American procurement rules would significantly hamper this program's ability to meet its objectives.

Specifically, large electric equipment like ship-to-shore cranes, rubber tire gantry cranes, and rail mounted gantry cranes – the backbone of a modern container port – are not manufactured in the U.S. AAPA has conducted extensive research to attempt to identify a domestic manufacturer, but we have been unable to locate one producing these product lines. On good faith, AAPA dedicated a full-time staffer to search for these equipment types, but they were unable to find them in the U.S. To date, no U.S. company producing these equipment types has joined or contacted AAPA in order to be connected to our member ports.

Further, [the Department of Transportation \(USDOT\) acknowledged the lack of domestic manufacturing](#) when granting a Buy American waiver to the Port of Philadelphia to electrify their ship-to-shore cranes.

Therefore, applying domestic preference requirements to this program would mean that ports would be unable to use grant funds to replace their largest – and highest emission – equipment with electrified equipment. This problem was the most frequently mentioned topic at listening sessions EPA held about this program. It is the main concern that AAPA members have expressed in discussions about this program's implementation. Indeed, in the aforementioned survey, 83% of port authorities said they have difficulty sourcing equipment and materials for emission mitigation infrastructure from U.S. manufacturers (enclosed at the conclusion of this document).

Such a broad elimination of procurement eligibility would certainly impede, or partially prevent this new program from being successful.

Therefore, AAPA requests that EPA refrain from or limit the application of domestic preference requirements for equipment purchases made under this program. We are not asking that the EPA ignore domestic preference requirements entirely; however, applicants and their suppliers would benefit from clear rules and an easy-to-understand system. If equipment cannot be sourced from U.S. manufacturers, assurances that applicants will be able to source it from allies abroad would go a long way towards encouraging ports to confidently apply for grants.

AAPA, however, is not asking that all Buy American requirements be ignored in perpetuity. AAPA is currently working with USDOT to create a demand survey of equipment needs at U.S. ports. We hope to use the results of that survey to work with American manufacturers and the Federal Government to incentivize the manufacture of some of these equipment types domestically. Please see the flyer attached at the end of this document for more information.

### **Scrappage Requirements**



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We have noted that some EPA grant and rebate programs that award funds for the purchase of heavy-duty vehicles require existing diesel-powered vehicles to be scrapped. AAPA respectfully cautions EPA from taking this approach for the Grants to Reduce Air Pollution at Ports program. Landlord ports often do not have the authority over their marine terminal operators (MTOs) to have diesel equipment scrapped. Successful implementation of a grant to purchase zero-emission equipment will require cooperation between public port authorities and private MTOs, and in most cases will also require some financial cost share from the MTO. MTOs will seldom be interested in a federal grant if it comes with the requirement that they scrap existing diesel-powered equipment. Most pieces of cargo-handling equipment have a useful life of over twenty years, and MTOs simply will not replace equipment in good working order with more expensive zero-emission alternatives. Allowing operators to retain diesel equipment as a backup, or at least sell the equipment to another market to defray the cost of alternatives will go a long way towards ensuring robust participation in the grant program. Additionally, many port authorities and MTOs lease equipment, making scrappage impossible. Should a scrappage requirement be included in this program, we are concerned there will not be enough participants to make it successful.

Rather, a program without a scrappage requirement will implement new zero-emission equipment at ports across the nation. New charging stations, shore power-compatible berths, stronger electric grids, and electric cargo-handling equipment will all become ubiquitous. All these new assets and installations will make low- and zero-emission port operations more feasible and financially attractive.

### **Program Timeline**

The IRA authorized and appropriated \$3 billion to the Grants to Reduce Air Pollution at Ports program “to *remain available* until September 30, 2027.” (Emphasis added.) AAPA seeks clarity on how EPA will define “available.” In our members’ experience with other federal grant programs, grants need only be obligated by these deadlines, meaning all federal permitting is complete and the Federal Agency has approved the project budget. In an ideal scenario, EPA need only announce awardees by September 30, 2027, allowing ports to pursue lengthy permitting and construction timelines past that date. However, if EPA determines that project construction must be completed by that date, EPA must begin the application and award cycle as soon as possible and with great urgency. Surely a tight timeline would not be preferable for either industry *or* for the EPA, which intends to see more long-term transformative results.

Under a worst-case scenario, in which all construction and federal reimbursement must take place prior to September 30, 2027, EPA should take into account that project permitting, grant obligation, and construction can take several years. If this is the case, EPA should release a notice of funding opportunity (NOFO) as soon as possible. While we believe it is still important that multiple rounds of funding be available to allow ports that don’t receive a grant in the first round to improve their applications, with a more restrictive deadline, funding rounds should be



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restricted to a small number over a short time span, giving project sponsors ample time to navigate the federal grant process.

In summary, we hope EPA will allow ports announced as awardees prior to September 30, 2027 to complete permitting, obligation, and construction after that date. If that is not possible, we hope EPA will allow ports that complete grant obligation prior to that date to complete construction and receive reimbursements after that date. In any case, this timeline speaks to the urgency for EPA to release a NOFO as soon as possible.

### **Allow Robust Cooperation with Private Sector Partners**

Most port authorities are landlords, leasing property to MTOs to handle day-to-day operations of cargo and passenger movement. In many cases, when port authorities want MTOs to utilize more low- or zero-emission equipment, they will provide subsidies to MTOs to purchase it. At landlord ports across the country, to successfully utilize this grant program, there will need to be an allowance for MTOs to retain ownership of cargo-handling equipment. Not all projects will come in the form of mobile equipment, either. In the case of electric grid or shore power assets, port authorities may retain ownership of the infrastructure but rely on MTOs for operation, maintenance, or a cost share of construction. Applicants to this program will be landlord and operating ports, they will apply for funding for mobile equipment and fixed assets, and they will intend to retain ownership of assets or transfer it to private companies. With all these differences, it is important that EPA provide a flexible framework to allow ports in different situations to all benefit from grants.

Additionally, ports rely on numerous small business owner-operators in the course of daily operations, including trucks, tugs, and workboats. Many ports have clean truck programs to subsidize the purchase of low- or zero-emission trucks owned by small businesses. In addition to MTOs, which are often comparably larger businesses, small business owner-operators are critical partners of port authorities, and AAPA hopes this grant program will be made eligible for the subsidized purchase and retrofits of trucks and harbor craft for small businesses.

### **Do Not Dilute the Program by Extending Awards to Land Ports of Entry and Non-Maritime Ports**

AAPA was concerned to hear several comments in November and December listening sessions asking EPA to extend this grant program to land ports of entry into the U.S. While land ports of entry are certainly an important node in the transportation supply chain, this grant program was clearly designed for maritime ports. Substantial federal programs already exist for land-based modes of transportation, while this program fills an unmet need in the maritime industry.

The IRA authorizing section is full of references to the maritime industry. To begin, allowing the program to be spent on “zero-emission port equipment” clearly differentiates the equipment



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from land-based transportation. Maritime ports have an array of equipment types that are used primarily in the maritime industry, so that specifying “port” equipment, rather than “cargo-handling equipment,” clearly means these funds should be spent at maritime ports. Under the definition of “eligible recipient,” “port authority” is specified. Maritime ports often have these unique arrangements where they are established as port authorities by local or state governments, while most land ports of entry are administered not by local authorities but by the Federal Government. “Port authority” is a clear reference to maritime ports. In a final obvious reference to maritime ports, the definition of “[z]ero-emission port equipment or technology” includes reference to emission capture technologies for “ocean-going vessels at berth.” All of this language in the IRA clearly points to all \$3 billion of awards to benefit maritime port authorities and their supporting land-side equipment technologies, not to land ports of entry or land-based multimodal facilities that do not have a maritime connection.

### **Make the Grant Process Simple for Small and Rural Ports**

AAPA’s membership spans geographic regions, with ports on the East Coast, West Coast, Gulf Coast, Great Lakes, inland rivers, Alaska, Hawaii, and US Territories. These ports are large and small, urban and rural, and they handle cargo of all types. Many of AAPA’s smaller ports do not have large budgets or staff sizes at their disposal for complicated federal grant applications, permitting processes, and monitoring. Already, small ports are discouraged from applying for USDOT grant programs because of the complexity involved. To mitigate emissions not only at the nation’s largest ports, but at small and rural ports, EPA should make the application and grant obligation processes as simple as possible. Data collection, monitoring, and project studies that require extensive monetary and staff time investments should be minimized. Additionally, it would be helpful for port authorities be able to use a portion of grants to cover overhead costs, reflecting the significant hours of staff time spent applying for and implementing grants.

*At the end of the day, the simpler the grant process, the more emissions will be mitigated.*

Very Respectfully,



Christopher J. Connor  
President and CEO  
American Association of Port Authorities



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