

November 20, 2023

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

Dear Administrator Regan,

I am writing on behalf of the American Association of Port Authorities (AAPA), representing 79 deep draft ports across the nation, an industry that sustains 31 million jobs and 26 percent of the U.S. economy. I would like to thank you for your and your staff's leadership in setting the parameters for the Clean Ports Program. America's ports are aggressively pursuing what we often term the Great Energy Transformation, but as you know, these projects are expensive. At a minimum, the port industry will require the full three billion dollars appropriated to achieve our collective, ambitious goals. To that end, AAPA is submitting the following feedback in response to the Clean Ports Program, as outlined in the October 31, 2023, first-look webinar.

Follow Congressional Intent, and Do Not Invent "Dry Ports" in Contravention of Federal Law and Policy

Three-billion dollars is a substantial investment; however, AAPA is strongly opposed to the Environmental Protection Agency (EPA) using this critical funding for rail and truck intermodal depots. If the EPA allows rail and truck intermodal depots to be eligible, seaport project funding will be crowded out. A 2022 survey of AAPA members found that ports are planning 50 billion dollars of emissions reduction projects over the next decade that require funding.¹

Further, AAPA is confident that Congress intended the Clean Ports Program to be developed specifically for maritime port equipment and to open this program up to non-maritime intermodal facilities is against Congressional intent. AAPA worked closely with Congressional leaders as the Inflation Reduction Act (IRA) was being drafted. At no point in these extensive discussions, spanning months, were "dry ports" mentioned. AAPA staff have had conversations with Congressional staff in recent months to relay our concerns about this program funding non-seaports, and Congressional staff confirmed that their intent was to fund seaports only. In hindsight, Congress should have included further language restricting use of this program to seaports; however, due to the IRA being a budget reconciliation measure, drafters were instructed to keep legislative text short. With this context in mind, the EPA should show deference to the intent of Congress and not make its own interpretations with so much at stake.

¹ [AAPA Environmental Survey Results Graphic, aapapowers.com, 2022](https://www.aapapowers.com/2022)



aapa-ports.org



@seaportsdeliverprosperity



@PortsUnited



Moreover, the EPA’s definition of “port” in this Program is contrary to Federal Government definitions. The Maritime Administration (MARAD) defines port as a “harbor with piers or docks.”² The US Army Corps of Engineers (USACE) defines a port as “a location where a ship can transfer cargo.”³ Both definitions are cited by the Bureau of Transportation Statistics (BTS) in its survey of the nation’s top 25 largest ports, a survey which does not even include mention of “dry ports.”⁴ In statute, for the purposes of the Port Infrastructure Development Program (PIDP), port is defined as, “(i) any port on the navigable waters of the United States; and (ii) any harbor, marine terminal, or other shore side facility used principally for the movement of goods on inland waters.”⁵ The EPA’s own Ports Primer is replete with references to navigable waterways and the Federal Government’s regulatory role, including listing the responsibilities of the Coast Guard, USACE, the Committee on the Maritime Transportation System, MARAD, the Navy, the National Oceanic and Atmospheric Administration, and more.⁶ These agencies and their responsibilities over waterways are categorically distinct from regulations governing “dry ports.”

Truck and rail transportation systems received sufficient, dedicated funding from other sources in the Bipartisan Infrastructure Law (BIL) and IRA. By diverting funding meant for maritime ports to other transportation modes, when those modes already receive significantly more federal funding than maritime infrastructure, the EPA will dilute the Clean Ports Program’s impact. This will leave many public maritime port authorities with no funding in this once-in-a-generation opportunity.

Specifically, the following programs are available for highway and rail transportation systems to mitigate emissions:

- Rebuilding American Infrastructure with Sustainability and Equity (RAISE) (\$7.5 billion from BIL)
- Carbon Reduction Program (\$6.4 billion from BIL)
- National Electric Vehicle Infrastructure (NEVI) Formula Program (\$5 billion from BIL)
- Consolidated Rail Infrastructure and Safety Improvements (CRISI) Grant Program (\$5 billion from BIL)
- Discretionary Grant Program for Charging and Fueling Infrastructure (CFI) (\$2.5 billion from BIL)

² [Glossary of Shipping Terms, Maritime Administration, 2008](#)

³ [Harbors and Ports, US Army Corps of Engineers](#)

⁴ [2 Definition of Ports and Methods Used to Identify the Top 25 Ports by Total Tonnage, Twenty-Foot Equivalent Unit \(TEU\), and Dry Bulk Tonnage, Bureau of Transportation Statistics, January 26, 2017](#)

⁵ [46 USC § 54301\(a\)\(12\), Legal Information Institute](#)

⁶ [Ports Primer: 3.3 Federal and International Governance, EPA, June 7, 2023](#)



- Congestion Mitigation and Air Quality (CMAQ) (\$2.587 billion in FY23)
- Clean Heavy-Duty Vehicles (\$1 billion from IRA)

AAPA recognizes the EPA’s interest in funding emissions reduction projects at land intermodal facilities. These facilities are a key part of the national freight transportation system, but as noted above, they have ample funding (nearly 30 billion dollars) available from other sources. Port authorities are typically not competitive with other modes of transportation for the largest federal grant opportunities. Ports received less than 2% of FY23 RAISE funds, for example. Unfortunately, it has been a challenge to get the attention of DOT and DOE to recognize the needs of port authorities when it comes to the NEVI and CFI programs.

With only one round of funding expected for the Clean Ports Program, it is unclear when or if there will be any future opportunities for maritime ports to fund emissions mitigation at this scale. To be sure, PIDP is an invaluable source for port improvement, but it is not geared towards emissions mitigation projects. If the EPA does not reverse course and exclude “dry ports” from the Clean Ports Program, there will be no federal funding exclusively for maritime port emission mitigation, and the EPA will have missed a historic opportunity to spur investment and operational changes in a particularly difficult, international, carbon-intensive modality.

Expand or Eliminate Restrictions on Charging Infrastructure Spending in Order to Maximize Project Impact

In the October 31st webinar, the EPA noted that it was considering capping the percentage of awards that can be spent on electric grid infrastructure at 10-20%. According to AAPA’s membership, charging infrastructure typically costs as much as electric equipment itself. AAPA recommends either that the cap be 50% or higher or that there be no cap at all, thereby allowing applicants to make the case that their proposed project would lead to the best outcome, even if it includes a higher share of spending on charging infrastructure. Electric equipment without the necessary charging infrastructure will be a liability. AAPA has seen examples of electric cargo handling equipment sitting unused, taking up valuable terminal space because charging infrastructure has not been built quickly enough. Our industry believes the EPA should exercise flexibility regarding the share of Clean Ports Program grants eligible to be spent on infrastructure.

Clarity is Needed on Cost-Share Information and Eligible Project Components

Applicants will likely contribute non-federal cost shares to project budgets, and we would appreciate clarity from the EPA on how these contributions will fit into any requirements on award spending. If the EPA restricts the portion of an award that is spent on infrastructure, it should not restrict non-federal cost shares similarly. Additionally, in the October 31st webinar, the EPA outlined infrastructure components that would be eligible for awards, including electric meters, electric panels, charging units, battery storage, and small wind and solar generators.



aapa-ports.org



[@seaportsdeliverprosperity](https://www.facebook.com/seaportsdeliverprosperity)



[@PortsUnited](https://twitter.com/PortsUnited)



AAPA cautions the EPA from limiting eligible project components to a restrictive list. AAPA's membership informed us that to complete electrification projects, they need to install distribution infrastructure, switchgears, transformers, conduits, trenching, wires, and power management systems. Ports typically are responsible for some cost sharing with local utilities when building out new transmission projects, and ports should be allowed to spend their awards on expenses, including planning studies, on the "utility side" of the meter.

Technology Readiness Levels Would Inadvertently Stymie Long-Term Progress

AAPA is aware of the EPA's desire to fund projects that result in real emissions reductions in the near term. However, we are concerned that being too restrictive in equipment's precise Technology Readiness Level (TRL) required for the EPA to consider an application could result in two key deficiencies for the Program:

First, being too restrictive could inadvertently exclude whole categories of equipment. The market for electric and hydrogen port equipment is still nascent, with new models constantly in development and production. Ports that purchase this equipment will in almost all cases be deploying it for the first time. While AAPA does not have a comprehensive database of all electric and hydrogen-powered port equipment available and their TRLs, it is clear that the market is dynamic. It would be regrettable to have categories of equipment precluded from the Clean Ports Program because they do not meet the TRL seven or eight requirements. It would be more problematic if a port authority either misunderstands the TRL of a particular model and is disqualified from the Program solely because its application falls one TRL short.

Second, restrictions could also prevent testing of some experimental but truly transformative projects. Significantly mitigating port emissions will require billions of dollars and years of sustained investment and testing. What the EPA can do is spur market development for this equipment, which will require new product testing. Electric and hydrogen-powered port equipment is very expensive, making grants to subsidize their purchase particularly attractive. Our recommendation is for the EPA to consider more nascent models if applicants can make the case that a federal grant will result in a meaningful advancement in a particular technology's use at maritime ports.

The EPA Has the Correct Interpretation for How to Avoid Build America Buy America (BABA) Procurement Problems

AAPA urges the EPA to maintain its current policy as relates to ABA rules. In a July 29, 2022, memorandum, the EPA announced that it would grant a waiver to BABA requirements for the Clean School Bus (CSB) Program and the Diesel Emissions Reduction Act (DERA) Program. In that memorandum, the EPA wrote that "the Agency has determined that vehicles and engines



aapa-ports.org



[@seaportsdeliverprosperity](https://www.facebook.com/seaportsdeliverprosperity)



[@PortsUnited](https://twitter.com/PortsUnited)



covered under the CSB and DERA programs are not covered under the Act.”⁷ AAPA agrees. Most electric and hydrogen-powered port equipment is not available from any American manufacturers. Maintaining this policy will allow ports to continue purchasing the equipment that is most feasible for efficient, successful operations.

Permitting and Timelines

In the October 31st webinar, the EPA announced that planning grantees would have a three-year timeline to complete studies and technology grantees would have a four-year timeline to complete their projects. The EPA also announced that these timelines could be extended in extenuating circumstances. As port authorities plan their applications, it would be helpful to have a better understanding of how the EPA’s permitting and grant obligation processes will work. To the extent that you are able, AAPA would welcome a briefing on the EPA’s permitting processes in advance of the Program’s Notice of Funding Opportunity (NOFO) publication. It is also critical that the September 30, 2027, deadline to spend these funds be interpreted as a deadline for grant obligation, and that the EPA take steps to ensure that all projects are obligated by this date.

Conclusion

AAPA and the port industry want to thank you for your leadership in launching the Clean Ports Program and in advance for the EPA’s tireless work to translate three billion dollars into cutting edge projects. I look forward to soon touring America’s ports as they install new charging infrastructure and electric and hydrogen-powered port equipment, and I would invite you to tour America’s ports with me. Please do not hesitate to reach out to me or my staff at any time for more information. I can be reached at cdavis@aapa-ports.org.

As you close in on a 2024 NOFO publication, I encourage you to reconsider your decision, against Congressional intent, to allow non-maritime ports to be eligible for Clean Ports Program funding. I also encourage you to give port authorities flexibility in their grants when it comes to the share of awards that can fund infrastructure, what specific project components are eligible, and what TRL requirements are in place. Our members would also appreciate a briefing on EPA’s permitting processes, and we have a number of in-person and virtual venues which we would be happy to make available to your staff.

⁷ [Public interest adjustment period waiver of the Build America, Buy America Act, for 2022 Clean School Bus Rebate Program; 2022 DERA State Grants; and 2022 DERA Tribal and Insular Area Request for Applications, Environmental Protection Agency, July 29, 2022](#)



aapa-ports.org



[@seaportsdeliverprosperity](https://www.facebook.com/seaportsdeliverprosperity)



[@PortsUnited](https://twitter.com/PortsUnited)



Very Respectfully,

A handwritten signature in black ink that reads "Cary Davis". The signature is fluid and cursive, with the first name "Cary" and the last name "Davis" clearly legible.

Cary S. Davis
President and CEO
American Association of Port Authorities



aapa-ports.org



[@seaportsdeliverprosperity](https://www.facebook.com/seaportsdeliverprosperity)



[@PortsUnited](https://www.twitter.com/PortsUnited)

The logo for the American Association of Port Authorities (AAPA). It features the acronym "AAPA" in a large, bold, blue font. Below the acronym, the tagline "ESSENTIAL. RESILIENT. UNITED." is written in a smaller, blue, sans-serif font. At the bottom of the logo, the slogan "SEAPORTS DELIVER" is written in a bold, blue, sans-serif font.

AAPA
ESSENTIAL. RESILIENT. UNITED.
SEAPORTS DELIVER