



CLEAN TRUCK PROGRAM

Fact Sheet

FREQUENTLY ASKED QUESTIONS (FAQ) UPDATE

Revised September 27, 2010

IMPACT OF COURT DECISION

1. Why were some of the Port of Los Angeles Concession Agreement provisions not enforced previously, but now will be enforced?

Beginning on April 28, 2009, several provisions of the Port Concession Agreement had been preliminarily enjoined pending trial by the United States Federal District Court (Court) in connection with a lawsuit filed against the City of Los Angeles (City) by the American Trucking Associations (ATA), challenging the legality of the Concession Agreement. The previously enjoined provisions were:

- Truck Ban,
- Transition to employee drivers,
- Hiring Preferences,
- Off-street parking,
- Financial Capability,
- Record-keeping

On August 26, 2010, after a trial on the merits, the Court ruled in favor of the City and held that the entire Concession Agreement as originally approved by the Board is legally enforceable. As of September 15, 2010 this judgment was formally entered by the Court and the preliminary injunction was lifted, which made all previously enjoined provisions immediately enforceable.

2. What will the changes be to the Port of Los Angeles Clean Truck Program (CTP) as a result of the final judgment in the *ATA vs. City of Los Angeles* litigation case?

The basic elements of the program will remain unchanged. On September 27, 2010, the Board of Harbor Commissioners approved an adjustment of the dates for implementation of three of the previously enjoined Concession Agreement provisions, in order to allow time for compliance monitoring and enforcement systems to be put in place and to allow time for the more than 900 LMCs that have entered into Concession Agreements to begin

compliance. Additional time has now been given for compliance with the transition to employee drivers, hiring preferences, and off-street parking requirements, as follows:

Employee driver transition requirement

Compliance monitoring for the 4th quarter of each year:

- 0% employee gate moves 12/31/2010
- 20% employee gate moves 12/31/2011
- 66% employee gate moves 12/31/2012
- 100% employee gate moves 12/31/2013

Hiring Preferences

The requirement to post job openings with the First Source Workforce Development Office has been delayed until further notice in order to allow the Port to put a new contract in place with that office to handle these kinds of job opportunities.

Off-Street Parking

LMCs have until January 1, 2011 to submit a plan and until July 1, 2011 to begin using the proposed location to park all of their drayage trucks when they are not in service.

Direct enforcement of the truck ban by the Port through the concession agreements, the requirement to maintain records pertaining to all concession agreement requirements, and the requirement to demonstrate financial capability to carry out the concession agreement obligations as part of each application for concession will commence as of **October 1, 2010**.

Three other concession agreement provisions were challenged but not previously enjoined, so they will continue being enforced: the requirement to submit a maintenance plan, the "1-800" placards", and the concession fees (one-time \$2,500 concession fee as part of each application for concession and the annual \$100 concession fee). These provisions will also be enforced in full starting October 1, 2010 (note the annual \$100 concession fee was commenced in February 2010 in coordination with the Port of Long Beach).

3. Which Concession Agreement provisions were previously enjoined?

The previously enjoined provisions were:

- Truck Ban,
- Transition to employee drivers,
- Hiring Preferences,

- Off-street parking,
- Financial Capability,
- Record-keeping

See answer to question 1 above for more details.

4. Which Concession Agreement provisions were challenged but not previously enjoined?

The following Concession elements were challenged in court but not enjoined:

- Maintenance Plan
- "1-800" Placards
- Concession Fees (one-time \$2,500 concession fee as part of each application for concession and the annual \$100 concession fee)

Enforcement in full of these provisions will resume starting October 1, 2010 (note the annual \$100 concession fee was commenced in February 2010 in coordination with the Port of Long Beach).

See answer to question 2 above for more details.

DIRECT ENFORCEMENT OF TRUCK BAN TARIFF

5. I'm confused. I thought that the Port was already enforcing the truck ban tariff?

Section III(e) of the Concession Agreement requires that a concessionaire must comply with the various truck ban requirements in the tariff and this allows the Port to hold trucking companies directly responsible if any of their trucks operate in violation of truck ban requirements. The ATA challenged the Concession Agreement as preempted by federal trucking law. In April 2009, the Federal District Court preliminarily enjoined the ability of the Port to directly enforce this provision against motor carriers (along with the others listed above in the answer to question 1 above), pending trial. However, the Court allowed the Port to enforce the truck ban against its marine terminal operators through a Port tariff, by requiring the MTOs to restrict access to trucks according to the ban schedule. This is in fact how the Port has been enforcing the ban while the injunction was in effect. The terminals have leases with the Port to operate their facilities on Port property, and the leases require them to abide by the tariff. So that is why the terminals were still enforcing the bans at their entrance gates while the Concession Agreement requirements were being reviewed by Federal District Court.

The September 10, 2010 Federal District Court decision lifted this injunction, which once again now allows the Port to hold motor carriers directly responsible through the Concession Agreement if any of their trucks operate in violation of ban requirements.

What's the difference, you might ask? The important difference is that the Port temporarily lost the ability to enforce this (and other provisions) through their contract (Concession Agreement) directly with trucking companies. For example, even if the Port identified a motor carrier routinely bringing in dirty trucks in violation of the truck ban, the Port was powerless to take any action directly against the motor carrier, and had as its only remedy, taking action against its tenant, the marine terminal operator, for allowing the violator access. The whole idea of having a concession is to have accountability between the Port and the trucking companies that do business here. This accountability is a big part of what the ATA litigation was about.

6. What kinds of direct enforcement can the Port do now to enforce the truck ban tariff that it could not do before under the injunction?

The short answer is: all of the things that were enjoined are now enforceable by the Port directly against trucking companies if they are in violation. For example, under the injunction, if a trucking company failed to assure that trucks operating under its authority were in compliance with the truck bans (e.g. by allowing them to switch cargo loads to a non-compliant trucks on Port property), the Port can now take steps, through the Concession Agreement, to give notice of violation and take actions to compel the motor carrier to cease this activity or face loss of concession.

7. What is the Port going to do about intentional actions to avoid the Truck Ban or payment of the Clean Truck Fee by motor carriers that switch their cargo loads off-site from a compliant or Clean Truck to a banned or Clean Truck Fee-paying truck (drayoffs)?

This issue is very important to the Port and we are working with the State of California Air Resources Board to devise an enforcement approach for this activity that will not only apply to Port property (which is the limit of applicability for the Port's tariff), but also beyond (within the State's jurisdiction). The challenge for both the Port and the State is to develop a definition of a "dray-off" that will not preclude certain legitimate trucking activities where loads are "staged" or "sequenced" or even "transferred" after being picked up at a terminal for subsequent transport or deliveries.

EMPLOYEE DRIVER TRANSITION

8. How will the Port enforce the employee transition requirement?

The Port is currently developing a system to electronically track the employee transition requirement by percentage of gate transactions made by employees for each trucking company. We will release details for this system in the coming months.

9. What is an employee driver under the Concession Agreement?

Section III(d) of the Concession Agreement states:

“Employee” for the purpose of this Concession shall have the same meaning as under Section 3121(d) of Title 26 of the United States Code, and may include full-time, part-time, temporary or seasonal Employees to permit Concessionaire flexibility in driver staffing.

In addition, the Port requires that drivers must be directly employed by a motor carrier that is registered as the Concessionaire under the Port’s Concession Agreement. This ensures that the Port obtains the enhancements to safety and security from the controls which an employer has over its employee drivers, which were among POLA’s key goals of the Concession.

10. Where can I get more information about an employer’s responsibilities?

Below is the link to the U.S. Internal Revenue Service website for employer questions, including Employer Identification Number, Hiring Employees, Form I-9 Employment Eligibility Verification, Employment Taxes, Part Time or Seasonal Work, etc.:

<http://www.irs.gov/businesses/small/article/0,,id=98862,00.html>

Below are links to some of the State of California websites for State of California employer payroll tax registration, workers compensation, wages/labor standards, and workplace safety:

Employer Registration in California:

http://www.edd.ca.gov/Payroll_Taxes/Am_I_Required_to_Register_as_an_Employer.htm

Worker’s Compensation in California:

<http://www.dir.ca.gov/dwc/Employer.htm>

FAQs from the State of California Department of Labor Standards Enforcement (includes questions about minimum wage, rest periods, meal periods, overtime and pay deductions):

<http://www.dir.ca.gov/dlse/DLSE-FAQs.htm>

Cal-OSHA – Workplace Accident Reporting:

<http://www.dir.ca.gov/dosh/EnforcementPage.htm>

JOB REFERRAL SERVICES

11. When will Concessionaires start to use the job referral services of the First Source Workforce Development Center?

The requirement to post job openings with the First Source Workforce Development Office has been delayed until further notice in order to allow the Port to put a new contract in place with that office to handle these kinds of job opportunities.

OFF-STREET PARKING PLAN

12. What is the adjusted timetable for Concessionaire to submit the Off-street Parking Plan to the Port?

LMCs have until **January 1, 2011** to submit a plan and until July 1, 2011 to begin using the proposed location to park all of their drayage trucks when they are not in service.

13. When will the Port start to enforce the Parking Plan?

July 1, 2011

FINANCIAL CAPABILITY

14. What Financial Capability information does an applicant have to submit when applying for a Concession?

The following is a summary of the financial capability information requirements the Port required for applicants seeking a concession when the program began in 2008. This same information will be required again for new applicants, starting October 1, 2010. Please see the revised concession application on the Port website starting October 1, 2010 for details:

Business Experience

- Short summary of relevant business experience for the last three years that clearly describes the Applicant's ability to provide drayage services to the Port of Los Angeles, including:
 - i. Experience where similar service (Drayage) was provided, including the nature and extent of service
 - ii. Experience with the Port of Los Angeles and vicinity
 - iii. Experience with IOOs / employee drivers
 - iv. If the Applicant holds or has held concessions / permits in the City of Los Angeles or in other jurisdictions, please describe any regulatory and/or administrative penalties that have been assessed against the Applicant within the last three years and indicate the measures taken to ensure resolution of those issues.

Financial Statement

- Publicly listed companies must submit their most current annual report, most recent quarterly filings with SEC, and any pending or current legal actions against the company. The Port has the right to request Dunn & Bradstreet or other credit bureau reports deemed necessary. Private enterprises must submit a proxy balance sheet and income statement. Federal and state income tax returns are valid substitutes to meet the documentation requirement. Private enterprises must also certify that there are no pending or current legal actions against the entity, and/or such pending legal action will not have an adverse impact on the financial of the enterprise.

Port Review of Financial Statement

- US Customs bonded motor carriers have gone through a rigorous process to receive that rating. That process is sufficient for the Port and no further analysis of financial information will be required
- Motor carriers that are not US Customs bonded will be evaluated for their:
 - i. Experience in drayage, plus
 - ii. Positive Current Ratio (Current Assets / Current Liability or Total Assets / Total Liability), or
 - iii. An evaluation of one of the following:
 - i. total income or
 - ii. gross profit or
 - iii. net income
- The goal of this analysis is simply to determine that the company is capable of carrying out its obligations under the concession agreement

Destruction of Financial Information after completion of review

- As was done at the start of the Clean Truck Program, all financial information submitted to the Port for this review of Financial Capability will be destroyed immediately upon completion of the review

- We can also make arrangements to provide an in-person review of financial books in lieu of submitting this information in an application. The in-person review may take more time to schedule and conduct, and is not recommended if expedited review of the concession application is desired.

15. Will the Port require a new submission of Financial Capability information from existing Concessionaires who were approved during the injunction period without submission of Financial Capability information?

Section III(n) of the Concession Agreement states that this requirement must be satisfied “[p]rior to approval of the Concession application”. Therefore, any trucking company that has already been approved for a concession will not be required to submit this information. It will only be required of new applicants.

RECORD KEEPING

16. When will Concessionaires have to start keeping the records of previously enjoined Concession elements?

Starting October 1, 2010, trucking companies will be expected to keep records of compliance with all applicable concession provisions going forward.

17. If I have more questions about the Concession Agreement, whom can I contact?

The Port Concession Administrator is Tetra Tech. They can be reached at CTP@tetratech.com or please contact the Clean Truck Program helpline at: 866-721-5686. You can also contact Chris Cannon at ccannon@portla.org.