



Memorandum

Date: February 14, 2008

To: Board of Harbor Commissioners

From: Dr. Robert Kanter, Managing Director, Environmental Affairs and Planning

Subject: **Drayage Truck Concession Requirements and Tariff No. 4 Amendments**

Requested Action

Approve first reading of an Ordinance amending Section 10 (Clean Truck Program and Section 11 (Infrastructure Fee) of Tariff No. 4 and approve proposed Drayage Truck Concession Agreement.

Background

On November 20, 2006, the Long Beach and Los Angeles Boards of Harbor Commissioners approved the Clean Air Action Plan (CAAP). A key component of the CAAP is the implementation of a Clean Truck Program (CTP) which the Port has embarked upon. The CTP requires that to be admitted to the Ports in 2012 drayage trucks must be either replaced or retrofitted with emissions controls to meet the USEPA 2007 emissions standards. The CTP has been the subject of significant public outreach, including public workshops, meetings with stakeholders, both by committee and individually, and significant discussion at Board meetings of the respective Ports. The CTP is being implemented in a phased approach. On November 5, 2007, as the first key step for moving forward with the program, the Long Beach Board of Harbor Commissioners (Board) approved a tariff that will result in a substantial reduction in air pollution through the progressive ban of older, dirtier trucks calling at the Ports. That action was followed on December 17, 2007, by the Board's approval of a tariff implementing a Clean Truck Fee (CTF) to help finance retrofits or replacement of banned trucks, and established a Clean Truck Fund to hold such collected monies. Finally on January 14, 2008, the Boards adopted an Infrastructure Cargo Fee (ICF) to fund local infrastructure projects that would ease congestion, help move goods more efficiently, and reduce air pollution. Those monies would be held in a restricted Clean Truck Fund account for future construction of approved projects.

As the next step in the phased implementation of this program, staff is recommending approval of a Drayage Truck Concession Agreement to define the conditions that must be met to provide drayage services at the ports. The Concession Agreement will not require that drivers be employees of licensed motor carriers. In addition, staff is recommending approval of an ordinance that would: 1) conform the language contained in the Clean Truck Fee (CTF) to the language in the Infrastructure Cargo Fee (ICF) imposing the fee on the cargo owner; 2) change the initiation date for collection of the CTF, and; 3) link the collection of the CTF and ICF.

Description of Current Issues

Drayage Truck Concession Requirements

With the CTP the Ports have established the goal of improving air quality, safety and security, while ensuring reliable truck drayage service. To achieve that goal, staff are proposing that the

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Board establish a concession program that would specify conditions that must be met in order to provide drayage services to the ports. This program would be administered in such a way as to assure ongoing compliance with CTP requirements without substantial disruption to the movement of cargo through the ports.

The proposed concession program would specify that a drayage company must possess a Drayage Truck Concession (DTC) issued by the Ports. The DTC would have a term of five years which would be renewable, and would incorporate any changes to the CTP as a part of the Clean Air Action Plan. This would require that the Concessionaire:

- (a) be a licensed motor carrier in good standing and in compliance with the requirements of a valid license/permit under either (1) a California Motor Carrier Permit issued by the California Department of Motor Vehicles under the California Vehicle Code, or (2) a Federal Motor Carrier License (USDOT Number) and Operating Authority (MC Number);
- (b) enter each truck into the Port Drayage Truck Registry and update its information as necessary;
- (c) may use as drivers, employees, independent contractors or a combination;
- (d) give preference to drivers with a history of providing drayage services to the Ports and when the Concessionaire has job openings for drayage truck drivers or administrative staff, work with the Workforce Development Office's of the Cities of Los Angeles and Long Beach to fill those openings;
- (e) operate or provide trucks that meet the clean truck requirements in accordance with the Clean Truck Program;
- (f) ensure that all trucks operating under the Concessionaire's authority are in compliance with on-street parking restrictions and travel only in specified truck routes established by local municipalities;
- (g) prepare and implement an appropriate maintenance plan for all trucks operating under its authority, be responsible for vehicle condition and safety, and ensure that maintenance including retrofit equipment, is conducted in accordance with manufacturer's specifications;
- (h) ensure compliance with existing safety and operational regulatory standards, including driver training, vehicle maintenance, safety inspection and driving hours;
- (i) ensure compliance with all applicable security requirements and regulations for individuals operating under the Concessionaire's authority including Homeland Security requirements and enrollment in the TWIC program.
- (j) provide proof that healthcare insurance was made available to all drivers operating under its Concession.

- (k) equip and maintain in operation, in each truck operating under its authority, the RFID Tag assigned to that truck and supplied by the Program Administrator.
- (l) shall agree to submit to safety and security searches.

Additional Requirements

In addition to the permit requirements detailed above, the Concessionaire must:

- pay an application fee of \$250.00 plus an annual fee of \$100 per truck operating under its authority, which will be used to cover administrative costs associated with the Concession agreement.
- submit updates and progress reports, that include at a minimum: 1) Drayage Truck Registry update information for each drayage truck in service under the Concessionaire's authority; any updates to the Concessionaire's contact and business information; and a driver list and status of TWIC compliance for each driver operating under its authority. (Note: The CTP Administrator will be conducting ongoing monitoring and periodic audits of Concessionaires).
- procure and maintain General Liability Insurance, Automobile Liability Insurance and Workers' Compensation Insurance consistent with the CTP requirements.

MODIFICATION AND CLARIFICATION OF CLEAN TRUCK AND INFRASTRUCTURE TARIFFS

Clarification on Payment of the Fees

When the ports adopted the truck and infrastructure fees, their respective boards made it clear that their intent was "that the ultimate consumers of the cargo should absorb the true cost of transporting that cargo without imposing health costs and other externalities on communities surrounding trade corridors." Industry groups suggested that transportation intermediaries might have to absorb these costs if this policy was not further articulated in the tariff language itself. The first attempt to do so was a detailed definition of "beneficial cargo owner" adapted from a definition used in the industry. This definition, while preserving neutrality between the various classes of freight intermediaries, adds considerable complexity and practical implementation issues.

As a result, staff recommends deleting the beneficial cargo owner definition and modifying the fee provisions to clarify that where the fees cannot be collected from the cargo owners, due to bankruptcy for example, the ports will not seek to recover the fees from the vessels that brought the cargo and related parties. While the ports reserve the right to collect fees such as wharfage and dockage from vessels and related parties, that general reservation of rights is inconsistent with the stated policy that cargo owners pay the truck and infrastructure fees.

Clean Truck Fee Initiation Date

The tariff currently requires that the truck fee be collected beginning on June 1, 2008. However, not all terminals have equipment and processes in place to assess the fee and are not required to

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have them in place before August 1, 2008. To give terminal operators time to install and test any necessary equipment, it is recommended that the commencement date for collection of the truck fee be extended to October 1, 2008. The deadlines for phasing in cleaner trucks are not affected by this change and remain as originally adopted.

Linkage between the Truck Fee and the Infrastructure Fee

A fundamental objective of the Clean Air Action Plan is to facilitate growth in trade while substantially reducing the impact of trade, not only on a per unit basis but in the aggregate. Consistent with that premise, it is recommended that the tariff be amended to provide that the infrastructure fee only be collected if the truck fee can be collected. This is consistent with the objective that improvements in air quality in the vicinity of the ports should improve simultaneously with or in advance of further growth in port capacity.

Financial Impact

The Port will likely incur various administrative and operational costs to oversee administration of the Clean Truck Program including the Concession requirements. As noted above, however, many of those costs will be covered by revenue from the concession fee.

Recommendation

Environmental Affairs and Planning requests that the Board of Harbor Commissioners take the following actions:

- (a) Approve the concession approach and direct staff to return with an ordinance establishing a Concession Requirement, consistent with features described above, as a part of the Clean Truck Program.
- (b) Direct staff to research the healthcare options available to the future Concessionaires (i.e. requirement (j) above) and report back to the Board.
- (c) Approve for first reading the attached "Ordinance of the Board of Harbor Commissioners of the City of Long Beach Amending Ordinance No. HD-1357, Designated Tariff No. 4, by Amending Sections 10 and 11 relating to the Clean Truck Fee and the Infrastructure Cargo Fee.

Recommended by:

Approved by:



Dr. Robert Kanter
Managing Director, Environmental Affairs
and Planning

Richard D. Steinke
Executive Director

Attachment