

NOTICE OF COURT DECISION

FROM: THE PORT OF LONG BEACH

TO: STAKEHOLDERS AND INTERESTED PERSONS

RE: COURT DECISION CONCERNING THE CLEAN TRUCKS PROGRAM

DATE: MAY 1, 2009

I. PURPOSE.

The purpose of this Notice is to provide you with important information about a court decision affecting the Port of Long Beach (“POLB”) Clean Trucks Program (“CTP”) and the Concession Agreement that POLB is using to implement and manage the CTP.

II. WHAT YOU NEED TO KNOW.

A Federal court has issued an initial decision that allows POLB to continue to use the Concession Agreement to implement and manage the CTP. But, the court decided that POLB could not enforce certain individual parts of the Concession Agreement. Section IV of this Notice informs you of which provisions POLB will not enforce because of the court’s decision.

III. BACKGROUND.

In 2006, POLB and the Port of Los Angeles (“POLA”) adopted the Clean Air Action Plan (“CAAP”) in order to reduce emissions and air pollution from commercial activities at the San Pedro Bay Ports for the benefit of all persons living and working in the South Coast Air Basin. An important part of the CAAP is the CTP, which is designed to reduce air pollution from diesel trucks serving the Ports by phasing in certain emissions standards over a period of five years. While still in its initial stages, the CAAP has already reduced pollution and improved air quality in the South Coast Air Basin.

Shortly after POLB and POLA initiated the CTP, the American Trucking Associations, Inc. (“ATA”) filed a lawsuit in Federal District Court to block certain aspects of the program. In particular, ATA asked the court to issue a preliminary order stopping the Ports from using Concession Agreements to implement and manage the CTP. On April 29th, 2009, the court issued a decision that denied ATA’s request, and allowed the Ports to continue to use Concession Agreements. However, the court also found that certain individual provisions of the Concession Agreements are likely to be unlawful under Federal law. Therefore, the court ordered both POLB and POLA to refrain from enforcing those provisions. The court’s decision does not prevent the Ports from

moving forward with the CAAP and does not restrict the Ports from phasing in truck emissions standards—the key component of the CTP.

This Notice informs you of the provisions of POLB's Concession Agreement that POLB will not enforce in order to comply with the court's decision. Under Section VIII of the Concession Agreement, the remaining parts of the Concession Agreement shall continue in full force and effect.

IV. PROVISIONS OF POLB'S CONCESSION AGREEMENT THAT WILL NOT BE ENFORCED.

- Concession Requirement III.A. Clean Truck Tariff.

POLB will refrain from enforcing the Concession Agreement requirement that a Concessionaire's Trucks be modernized by either retrofit or replacement to comply with the CTP requirements of Section 10 of POLB Tariff No. 4 (the truck phase-out).

However, the truck phase-out remains in effect because POLB's Tariff No. 4 was not affected by the court order. Marine terminal operators will enforce the truck phase-out in accordance with Section 10 of Tariff No. 4.

- Concession Requirement III.E. Driver Hiring.

POLB will refrain from enforcing the requirement that Concessionaires give a hiring preference to drivers with a history of providing drayage services at the Port. POLB will also refrain from enforcing requirements that Concessionaires post job openings at the First Source Workforce Development Office and consult the First Source list of prospective employee applicants prior to hiring.

- Concession Requirement III.F. Truck Routes and Parking Restrictions.

POLB will refrain from enforcing the requirements that Concessionaires (1) submit a parking plan for approval, and (2) ensure that Permitted Trucks remain in compliance with that plan, and all state and local laws and Port tariffs regarding (i) parking and stopping and (ii) truck routes and permit requirements for hazardous materials, extra-wide, over-height, and overweight loads.

Please note that these laws may continue to be enforced by State and local law enforcement agencies.

- Concession Requirement III.H. Truck Safety and Operations Regulations.

POLB will refrain from enforcing the recordkeeping and record inspection requirements of this section to the extent that Concessionaires would be required to keep and make available records other than those pertaining to driver qualifications, driver training, vehicle maintenance, safety inspection, controlled substances and alcohol testing and hours-of-service for all employee drivers and contractor drivers. POLB will not require

Concessionaires to keep and make available records beyond those listed above. The remaining aspects of Section III.H remain in effect.

- Concession Requirement III.I. Driver Health Insurance.

POLB will refrain from enforcing the requirement that Concessionaires provide proof to the Port that drivers were duly notified of available health insurance programs, including programs identified by the Port.

- Concession Requirement III.O. Financial Capability.

POLB will refrain from enforcing the requirement that Concessionaires demonstrate to the Executive Director's satisfaction that they possess the financial capability to perform their obligations under the Concession Agreement over the term of the agreement.

- Concession Agreement, Sched. 2, Section 2.1. Concession Fees.

POLB will refrain from enforcing Section 2.1 of Schedule 2 of the Concession Agreement related to payment of an application fee of \$250.00 and an annual fee of \$100.00 per Permitted Truck. These fees will not be required in connection with the Concession Agreement.

- Concession Agreement, Sched. 2, Sections 2.2 and 2.3. Reporting.

POLB will refrain from enforcing Sections 2.2 and 2.3 of Schedule 2 of the Concession Agreement related to reporting requirements and periodic reviews / audits, except to the extent that these sections require reporting of information related to a Concessionaire's compliance with safety-related provisions of the Concession Agreement that may be enforced under the court's order while the Concession Agreement is in effect.

- Concession Agreement, Sched. 3, Sections 3.1 and 3.9. Indemnity and Insurance Requirements.

POLB will refrain from enforcing Sections 3.1 (Indemnity) and 3.9 (Accident Reports) of Schedule 3 of the Concession Agreement. Concessionaires will not be required to indemnify, protect, defend, and hold harmless POLB, as provided under Section 3.1. Also, Concessionaires will not be required to report an accident or occurrence to the Executive Director, as provided under Section 3.9. However, Sections 3.2 through 3.8, concerning insurance, shall remain in effect.

- Concession Agreement, Sched. 4., Section 4.2. Default and Termination.

POLB will refrain from enforcing Section 4.2, subsections (a), (c), (g), (h), (i), and (j) as events of Default under Schedule 4 of the Concession Agreement. POLB will also refrain from enforcing as events of Default under Section 4.2, subsection (b) (except to the extent that it requires compliance with enforceable provisions of the Concession

Agreement); subsection (k) (except to the extent it requires compliance with provisions and laws specifically addressed to motor vehicle safety); and subsection (f) (except to the extent the information it requires is related to motor vehicle safety provisions of the Concession Agreement.) However, the remaining portions of Schedule 4, concerning default and termination, shall continue in effect.

V. ADDITIONAL INFORMATION.

Additional information about the court decision and a copy of the Notice will be made available on POLB's website at [insert internet address]. You will be able to review a copy of the court's decision.

Information about the effect of the court decision on POLA's Concession Agreement is available at [insert internet address].

For more information about the CAAP and the CTP please visit the following websites:

http://www.polb.com/environment/air_quality/clean_air_action_plan.asp

<http://www.portoflosangeles.org/environment/caap.asp>

<http://www.cleanairactionplan.org/>

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