

BTA

BEFORE THE
FEDERAL MARITIME COMMISSION

RECEIVED

2008 MAR 11 PM 3:30

OFFICE OF THE CLERK
FEDERAL MARITIME COMMISSION

In re:)
Los Angeles/Long Beach Port)
Terminal Operator Administration)
And Implementation Agreement)
FMC Agreement No. 201178)

COMMENTS OF THE NATURAL RESOURCES DEFENSE COUNCIL

I. Summary and Introduction.

In an ill-advised effort to prevent reform of the environmental catastrophe that is port drayage at the Ports of Los Angeles and Long Beach (the "Ports"), the American Trucking Association ("ATA") has asked the Federal Maritime Commission ("FMC") to halt the Ports and the West Coast Marine Terminals Operators from "collect[ing] and exchanging information, engage[ing] in discussions, and reach[ing] agreement" with regard to several environmental, security, and infrastructure programs.¹ This irresponsible step is procedurally and substantively invalid.

In its March 3rd, 2008 filing, the ATA asks the FMC to stop the development of programs that will aid in cleaning up the serious toxic pollution problems associated with Port operations. Instead of relying on science and actual emissions inventories, the ATA attempts to paint its request to halt work on the Ports' Clean Trucks Programs as "not hav[ing] a negative effect on the removal 'dirty' diesel trucks from port drayage service."²

Exactly the opposite is true. The ATA's transparent attempt to make their actions appear benign ignores the fact that the ATA is asking the FMC to disallow a program within the San Pedro Bay Ports Clean Air Action Plan ("CAAP") that is essential to cleaning up Port trucking: the idea that the Ports can keep dirty, polluting trucks off their property. Moreover, since the agreement at issue covers several issues, including port security, the ATA's actions could have negative impacts well beyond impeding work on the Clean Trucks Programs.

II. The Interests of Environmental Commentators in this Matter.

The Natural Resources Defense Council ("NRDC") is a national non-profit organization, which maintains offices in Los Angeles and San Francisco, as well as New York, Washington, D.C., Chicago, and Beijing, China. NRDC has more than 1.25 million members and e-activists nationwide, more than 97,700 of whom reside in the State of

¹ Comments of the Intermodal Motor Carriers Conference, American Trucking Association In Re: Los Angeles/Long Beach Port/Terminal Operator Administration and Implementation Agreement, 18 (March 3, 2008) [Attached as Exhibit A].

² *Id.*

California. One of NRDC's organizational purposes is to protect the environment and public health, including the environment and health of its members. Reducing harmful diesel pollution is a key component of this work. NRDC has identified port operations as a significant source of diesel pollution in California. NRDC has therefore maintained a long-standing commitment to advocate for significant reductions in diesel pollution from port operations and has developed substantial expertise in the legal and scientific issues surrounding diesel pollution. Specifically, NRDC has spent significant resources and time advocating for the clean up of the San Pedro Bay Ports, collectively the largest source of air pollution in Southern California.

III. Good Cause Showing for Late-Filed Comments.

By seeking leave of the Commission to file comments outside of the 10 day window that 40 C.F.R. § 535.603 allows, the NRDC must show good cause.³ Since, the ATA's papers are so far afield of the Los Angeles/Long Beach Port/Terminal Operator FMC Agreement No. 201178 that your agency noticed in the Federal Register on February 21, 2008, NRDC is compelled to provide a response to the ATA's comments based on the comments' expansive scope and the detrimental relief it seeks from the FMC. NRDC did not see a copy of the ATA's comments until the end of the day on Monday, March 3rd, and because of this, could not comply with the 10 day window. It is our understanding that accepting these comments only seven days after the comment period expired will not prejudice any of the parties to the agreement and will most surely aid the FMC in making a determination on how to approach the requests made within the ATA's comments. Thus, we respectfully request that the Commission grant NRDC leave to file these comments.

IV. Procedural Flaws With ATA's Requests.

The ATA seeks to use the administrative comment period provided by agency regulations to cause the FMC to take premature action that is neither ripe nor warranted under current circumstances. As the FMC is well aware, the agreement filed on February 12, 2008 between the Port of Los Angeles, the Port of Long Beach, and the West Coast Marine Terminals Operators, while related to the Ports' efforts to clean the air, actually serves to allow for discussions between the Ports and their resident marine terminal operators relating to several issues pertaining to "port security, infrastructure, or clean air."⁴ As the agreement states, "the purpose of this Agreement is to authorize the parties to collect and exchange information, engage in discussions, and reach agreement with respect to the administration and operation of in a manner that will benefit the Los Angeles/Long Beach port community."⁵ The following sections outline two major procedural flaws with the ATA's request to have the FMC interfere with this recently filed agreement.

³ See 40 C.F.R. § 535.603.

⁴ Los Angeles/Long Beach Port/Terminal Operator Administration and Implementation Agreement: FMC Agreement No. 201178, at 1 (Feb. 12, 2008) [Attached as Exhibit B].

⁵ *Id.*

A. The ATA's claims and requests exceed the scope of the agreement filed with the FMC.

The ATA is asking the FMC to take action on two programs that have yet to be fully developed—namely the Port of Los Angeles Clean Trucks Program and the Port of Long Beach Clean Trucks Program. The FMC regulatory provisions covering commenting on Ocean Common Carrier and Marine Terminal Operator agreements clearly state that comments must be “regarding a filed agreement.”⁶ By twisting the words of the February 12, 2008 Agreement, the ATA hopes to resolve its grievance prematurely by commenting on an agreement that is simply aimed at fostering discussion and collaboration between the Port of Los Angeles, the Port of Long Beach, and their resident marine terminal operators. Significantly, the ATA has not provided the FMC with the text of the recently enacted Port of Long Beach Clean Trucks Program; nor has the ATA dealt honestly with the fact that the Port of Los Angeles has not yet adopted a Clean Trucks Program. Because the ATA's request goes well beyond what 40 C.F.R. Section 535.603 allows, the FMC should simply receive and file the comments of the ATA.

B. The ATA's Claims is Not Ripe Because the Ports Have Not Fully Developed their Clean Trucks Programs.

As indicated above, the Port of Long Beach has not finalized all portions of its Clean Trucks Program and the Port of Los Angeles has not enacted its program. Accordingly, it is premature for the ATA to ask the FMC to halt work on these key pieces of the Clean Air Action Plan—an unwarranted step that could severely impede, if not kill, the ability of each Port to effectively address the serious public health problems caused by port trucking pollution.⁷ Moreover, since the agreement filed with the FMC does not even mention the concession agreement, NRDC strongly disagrees with the ATA's assertion that “the filing of the Agreement has placed the concession issue expressly on the Commission's agenda.”⁸ Because of this, the FMC should ignore the ATA's requests for immediate and drastic action.

V. The FMC Must Not Impede Crucial Clean Air Efforts at the Most Toxic Location in Southern California.

The San Pedro Bay ports are major sources of air pollution in Southern California, and emit high levels of diesel Particulate Matter (“DPM”) and other pollutants that currently harm all residents in the South Coast Air Basin (“SCAB”). The California Air Resources Board (“CARB”) identified DPM as a toxic air contaminant in 1998.⁹ Recently, the South Coast Air Quality District (“SCAQMD”) released a draft of its third edition of the Multiple Air Toxics Exposure Study (“MATES III”).¹⁰ MATES III found that “the highest risks from air toxics surrounding the port areas, with the highest grid cell risk

⁶ 40 C. F.R. § 535.603.

⁷ The recent report released by Beacon Economics outlines the potential gains to be had from the Clean Trucks Program as proposed by the Ports in April of 2007. [Attached as Exhibit C].

⁸ ATA Comments, at 5.

⁹ See <http://www.arb.ca.gov/toxics/dieseltac/factsht1.pdf>.

¹⁰ SCAQMD, Draft Multiple Air Toxics Exposure Study in the South Coast Air Basin, (January 2008).

about 2,900 per million, followed by the area south of central Los Angeles where there is a major transportation corridor.”¹¹ As the largest source of air pollution in Southern California, the SCAQMD estimates that “[c]ollectively, port-related sources create more than 100 tons per day of smog and particulate-forming nitrogen oxides – more than the emissions from all 6 million cars in the region. Port sources also release approximately 25% of diesel particulate matter emitted in the [South Coast Air Basin].”¹² The SCAQMD further notes that “without substantial control from port-related sources, it will not be possible for this region to attain federal ambient air quality standards for ozone or PM2.5.”¹³

As the FMC is aware, the Ports came together to adopt the San Pedro Bay Ports Clean Air Action Plan in 2006. Clean air regulators on the local (SCAQMD), state (California Air Resources Board) and federal (Environmental Protection Agency) level participated in the development of this plan. To the best of our knowledge, the ATA did not participate in that plan development through submitting comments or testifying at the public hearings and workshops related to the CAAP. The CAAP included a menu of options for the Ports to consider in tackling the trucking issue, and the Ports committed to “develop program details and an implementation plan for Executive Directors review by the end of the 1st quarter of 2007.”¹⁴ We understand that, in late 2007, the ATA provided comments and sought to have the FMC quash any efforts by the San Pedro Bay ports to clean up their operations. Now, the ATA is again attempting to prevent the ports from cleaning up trucking pollution, which is clearly against the public interest due to the need to retire the thousands of old, polluting trucks that are currently serving the Ports.

The ATA argues that the San Pedro Bay ports Clean Trucks Program is not needed due to the recently adopted regulation by the California Air Resources Board (“CARB”) and the public subsidies provided by California Proposition 1B for air quality improvements in trade corridors. However, the ATA provides no analysis of the substantial environmental benefits the Ports’ Clean Trucks Programs will have. In fact, the Ports’ Clean Trucks Program are designed to *exceed* the benefits of the CARB regulation and *exceed* the CARB standards. The Clean Trucks Programs are also designed to facilitate the implementation of the CARB regulation. In fact, when writing about the Clean Air Action Plan initiatives, CARB noted that “[t]he key measures to cut air pollution from port operations are the heavily-subsidized Clean Truck Program, and a shore-side expansion program to bring grid-based electrical power to ship berths.”¹⁵ Moreover, the ATA has failed to point out that CARB was one of the agencies that helped develop the Clean Air Action Plan; it would be odd for CARB to allow inclusion of an unnecessary program in that document.

Nor does the ATA explain how preventing the Ports from engaging in discussions about how to collect a fee aimed at providing billions of the dollars *to the truck industry* serves

¹¹ *Id.* at 6-2.

¹² SCAQMD, 2007 Air Quality Management Plan, at IV-A-119.

¹³ *Id.*

¹⁴ Final 2006 San Pedro Bay Ports Clean Air Action Plan Technical Report, at 70.

¹⁵ See CARB, Proposition 1B: Goods Movement Emission Reduction Program Staff Report on Proposed Guidelines for Implementation, at 54 (Jan. 3, 2008).

the interests of its members. Essentially, the ATA makes the argument that the Ports are allowed to donate hundreds of millions of dollars of public funds from Proposition 1B to the trucking industry, but it is not allowed to place any conditions whatsoever on the receipt of those funds by the trucking industry.

In addition, the actions requested by the ATA could be harmful to national security. While not necessarily within the purview of NRDC's advocacy, we remind the FMC that the agreement at issue provides a venue for discussing the Transportation Worker Identification Credential program with the ports' resident marine terminal operators.¹⁶ It is our understanding that it would be positive for both Ports to work with the industry to discuss how to implement this program. We do not see how squelching the filed agreement advances the security interests of the ports.

VI. The FMC Does Not Have Jurisdiction to Address the Claims Made Under the Federal Aviation Administration Authorization Act in ATA'S Petition.

The ATA letter relies heavily on arguments that the Clean Trucks Program is preempted by the Federal Aviation Administration Authorization Act ("FAAA"). While this is an interesting inquiry, the ATA ignores the fact that the FMC is the inappropriate entity to make this determination. The statutory scope of activities that the FMC may undertake includes the following:

The Commission regulates common carriers by water and other persons involved in the foreign commerce of the U.S. under provisions of the Shipping Act, 1984, as amended by the Ocean Shipping Reform Act of 1998 [46 U.S.C. app. 1701-1720]; section 19 of the Merchant Marine Act, 1920 [46 U.S.C. app. 876]; the Foreign Shipping Practices Act of 1988 [46 U.S.C. app. 1710a]; sections 2 and 3, Pub. L. 89-777, Financial Responsibility for Death or Injury to Passengers and for Non-Performance of Voyages [46 U.S.C. app. 817d and 817e]; and other applicable statutes.¹⁷

This does not include determining the preemptive scope of the FAAA. If Congress had intended the FMC to be the agency to determine what activities violate the FAAA, it would have placed that authority within the FAAA—but it did not do so. We are aware of no authority and the ATA has provided to show the FMC can engage in this conduct.

VII. The ATA has Failed to Provide Sufficient Justification for its requests of the FMC.

Of particular significance, the ATA has failed to provide sufficient justification for requesting the FMC to prevent the Ports of Los Angeles and Long Beach from finalizing their Clean Trucks Programs. For example, the ATA has failed to show how many of its more than 37,000 motor carrier members provide drayage services to one or both ports.

¹⁶ See Agreement, at 1.

¹⁷ 46 C.F.R. §501.2.

The ATA also fails to provide any information on how many of its members are so thinly capitalized that paying a \$250 application fee, one of the Ports' proposed concession requirements, will be too much of a burden and prevent the company from being able to provide drayage services to the ports. Simply providing bald assertions without evidence should not persuade the FMC to stop the ports from working on the Clean Trucks Programs.

VIII. The ATA Does Not Provide A Rigorous Legal Argument In Opposition to the Clean Trucks Programs.

We are not in agreement that the Ports are preempted from implementing the varying portions of the Clean Trucks Programs. Moreover, the ATA provides an inadequate analysis of the market participant doctrine. The market participant doctrine was originally articulated by the Supreme Court as an exception to the prohibitions of the dormant Commerce Clause. These early market participant cases held that the dormant Commerce Clause does not prohibit state and local government action that affects interstate commerce if such action takes the form of government participation in the market rather than regulation.¹⁸ Later, the Supreme Court applied the market participant doctrine in the context of federal preemption under the National Labor Relations Act ("NLRA"), holding that when the government acts in its proprietary capacity—as a market participant, buying or contracting for the goods and services it needs to function—its actions are exempt from preemption under federal law.¹⁹

The ATA utterly fails to note that the Ninth and other circuits have since repeatedly applied the market participant exception to uphold state and local laws of a proprietary nature that would otherwise be preempted under federal law, including the NLRA, the FAAA, and the Clean Air Act.²⁰ This mountain of relevant caselaw is absent from ATA's petition. NRDC is more than willing to provide additional discussion regarding the market participant doctrine to the FMC, but given the clear procedural violations at issue here, this is probably not the appropriate venue.

¹⁸ See, e.g., *Hughes v. Alexandria Scrap Corp.*, 426 U.S. 794, 96 S.Ct. 2488, 49 L.Ed.2d 220 (1976).

¹⁹ *Building & Construction Trades Council v. Associated Builders and Contractors*, 507 U.S. 218, 231-32, 113 S.Ct. 1190, 122 L.Ed.2d 565 (1993)(hereinafter "*Boston Harbor*").

²⁰ See, e.g., *Babler Bros., Inc. v. Roberts*, 995 F.2d 911 (9th Cir. 1993)(upholding an Oregon statute that required contractors to pay their employees overtime wages on public projects despite claims that such action would otherwise be preempted under the NLRA); *Tocher v. City of Santa Ana*, 219 F.3d 1040 (9th Cir. 2000)(upholding ordinance allowing city to maintain exclusive list of companies eligible to tow abandoned or disabled vehicles, despite claims that such actions would otherwise be preempted by the FAAA); *Cardinal Towing & Auto Repair, Inc. v. City of Bedford*, 180 F.3d 686, 691-692 (5th Cir. 1991) (recognizing market participant doctrine under the FAAA); *Petrey v. City of Toledo*, 246 F.3d 548, 555 (6th Cir. 2001) (recognizing market participant doctrine under the FAAA) *Bldg. & Constr. Trades Dep't v. Allbaugh*, 295 F.3d 28 (D.C. Cir. 2002), *cert. denied*, 537 U.S. 1171 (upholding executive order disallowing contractors on all federal contracts from requiring or prohibiting employees to enter a labor agreement, despite claims that such actions would otherwise be preempted under the NLRA).

IX. The Clean Trucks Program Does Not Violate the Shipping Act.

The FMC is charged with interpreting the Shipping Act.²¹ The Shipping Act requires that the Ports establish “just and reasonable” regulations.²² As the No Net Increase Legal Subgroup articulated the standard, “tariffs and leases may not create an unreasonable preference or advantage in favor of one Port customer or lessee over another. Likewise, tariffs and leases may not unreasonably prejudice or impose an unreasonable disadvantage on any customer or lessee.”²³ It is our understanding that the proposed Clean Trucks Programs, once enacted, will treat all customers, lessees, and Licensed Motor Carriers the same by creating a uniform set of standards applicable globally within each port. The ATA has failed to provide any justification how this violates the Shipping Act—nor could it, since the Port of Los Angeles has not yet enacted its plan and the Port of Long Beach has not fully fleshed out its plan. In addition, the deadly pollution produced by existing port operations is such that further port expansion and infrastructure development, necessary to service the growing stream of imports, cannot go forward unless the port reduces truck generated pollution. In fact, the Port of Los Angeles needs the Clean Trucks Program to meet its commitments within a recent expansion plan it adopted that is currently under appeal by several groups, including NRDC.²⁴ Thus, ATA has not provided any factual basis for the FMC to take the ATA up on its requests to halt work on the Clean Trucks Programs.

X. Conclusion.

The FMC should not heed the requests of the ATA because the requests are procedurally incorrect, ask the FMC to engage in legally unjustified conduct that is outside the FMC’s jurisdiction, and are not supported factually by the document submitted by the ATA. We appreciate your consideration of these comments. Please feel free to contact counsel for the NRDC if you have any questions relating to these papers. Please direct all future correspondence with the NRDC to David Pettit and Adrian Martinez.

Respectfully Submitted,



David Pettit (California State Bar No. 67128)
Melissa Lin Perrella (California State Bar No. 205019)
Adrian Martinez (California State Bar No. 237152)
Natural Resources Defense Council
1314 Second St.
Santa Monica, CA 90401
(310) 434-2300

March 10, 2008

²¹ See 46 U.S.C. § 1701 *et seq.*

²² 46 U.S.C. § 1709(d).

²³ No Net Increase Task Force Legal Working Group Memorandum, at 5-18.

²⁴ See Port of Los Angeles, Berths 136-147 [TraPac] Container Terminal Project Draft EIR/EIS, at 3.2-201 (June 2007), available at http://www.portoflosangeles.org/EIR/TraPac/Chapter_3.2_Air_Quality.pdf.

CERTIFICATE OF SERVICE

I, Penny Primo, hereby certify that I have today, March 10, 2008, sent copies of the attached Comments of the Natural Resources Defense Council, by electronic mail and Overnight Mail to:

David F. Smith, Esq.
Sher & Blackwell LLP
1850 M Street, N.W.
Washington D.C. 20036

Counsel for the West Coast MTO Agreement

Richard O. Levine
Stephen S. Anderson, Jr.
Constantine Cannon LLP
1627 Eye Street, N.W., Suite 1000
Washington D.C. 20006

And

C. Jonathan Benner, Esq.
Troutman Sanders LLP
401 9th Street, N.W.
Washington D.C. 20004

Counsel for the Port of Los Angeles and Long Beach



Penny Primo



FOR IMMEDIATE RELEASE

Contact: Gordon Smith
310-732-3568
gsmith@portla.org

LOS ANGELES HARBOR COMMISSION APPROVES LANDMARK CLEAN TRUCK PROGRAM

WILMINGTON, Calif. -- March 20, 2008 – The Los Angeles Harbor Commission today approved a landmark Clean Truck Program (CTP) designed to achieve long-term sustainability, accelerate the replacement of high-polluting trucks with cleaner trucks, and provide market incentives to encourage private investment and create a capitalized, asset-based short-haul trucking or “drayage” system at the nation’s largest container port.

“The passage of L.A.’s Clean Truck Program puts us on the road toward cleaner air for the benefit of all Southern Californians,” said Los Angeles Harbor Commission President S. David Freeman. “This historic vote is a victory for our health, our environment and our economy.”

“Our program is designed to more rapidly address the public health issue generated by drayage truck pollution and move toward an asset-based system that will provide long-term sustainability in this fragmented market,” said Port Executive Director Geraldine Knatz, Ph.D. “An asset-based drayage system with a more stable workforce will provide more safety, concessionaire accountability and certainty that our Port will only have to fund the turnover of our fleet this one time and not again in seven to 10 years from now.”

The Port’s CTP is designed to encourage an evolution of the Port drayage market towards an asset-based system in which Licensed Motor Carriers (LMCs) enter into drayage concession agreements with the Port and are responsible for owning and maintaining the truck assets used to perform drayage services at the Port under the concession. Port of Los Angeles drayage concessionaires must also commit to using employee drivers for Port drayage by year 2012 through a phased-in schedule, with flexibility afforded for peaks and troughs in demand by use of temporary or part-time employees.

By working with a concessionaire network of LMCs that have direct control over employee drivers, the Port can more effectively ensure that concessionaires meet requirements that include having a legitimate place of business and proof of adequate off-street parking. These requirements will reduce the impact of trucks driving into communities and parking in front of home or businesses, especially in the Harbor District.

-more-

222 -- POLA Approves CTP

Pollution from the truck fleet serving the San Pedro Bay ports contributes to hundreds of premature deaths annually in Southern California, with the public paying between \$100 million and \$590 million annually in health impact costs alone, according to the California Air Resources Board. The present system of LMCs and low-wage, paid-by-the-load independent truck owner-operators (IOOs) provides no incentive for improving efficiency and no financial means to replace the existing truck fleet with cleaner, more efficient trucks.

As operators with a vested interest in their truck assets, Port of Los Angeles concessionaires will be more accountable for proper truck maintenance and safety standards, so their trucks will continue to generate lower emissions and retain maximum value over the long haul. Concessionaires also will have more incentive to pursue business efficiencies that are common within the trucking industry, like operating fewer trucks to accomplish the same number of container hauls – one of the easiest ways to reduce pollution and truck congestion.

The Port of Los Angeles Clean Truck Program closely resembles the nationwide non-draysage trucking industry, where capitalized, asset-based trucking companies use employee drivers and pay higher wages in order to recruit and retain truck drivers. With owner-operators in the present port draysage earning \$10 to \$12 per hour on average after fuel and necessary truck maintenance costs, truck drivers elsewhere earning \$20 per hour or more have no incentive to work in port trucking.

According to a draysage options analysis performed by The Boston Consulting Group (BCG), the current draysage system imposes between \$500 million and \$1.7 billion of costs on the public each year through: operational inefficiencies (e.g. impact on truckers and trucking companies of truck under-utilization, traffic congestion and lack of driver health/benefits); city/community costs (e.g. road maintenance, environmental damage, vehicle and driving safety and residential impacts from truck traffic and parking); and, above all, public health (premature death, hospital admissions, workday and school-day loss, and restricted activity).

By all accounts, the cost of replacing the present truck fleet will raise the price shippers pay to move their cargo through the San Pedro Bay ports. But at an incremental cost of \$500 million over a non-asset and employee-based draysage model, the additional cost of the Port of Los Angeles' system is less than the externalized, public-borne costs (\$500 million to \$1.7 billion annually) that are offset by a transformed draysage market. According to BCG's analysis the employee based system should deliver a positive cost: benefit ratio from 2010 onwards.

In November 2007, the Los Angeles and Long Beach Boards of Harbor Commissioners approved a progressive dirty truck ban schedule which begins October 1, 2008 by prohibiting all pre-1989 trucks from working in port draysage. By January 1, 2012, all draysage trucks operating in the port complex will be required to meet 2007 federal emission standards, which will reduce port related truck pollution by an estimated 80 percent. In December 2007, both port commissions approved cargo fee tariffs to accelerate the replacement of the existing truck fleet by assessing a \$35 gate fee per twenty-foot container unit (TEU) to generate funds to help underwrite the replacement of the existing truck fleet.

-more-

333 -- POLA Approves CTP

The Port of Los Angeles Clean Truck Program is consistent with the recently approved Port of Long Beach Clean Trucks Program in terms of the truck ban schedule. At today's meeting, the Harbor Commission approved a revised start date for the collection of the Clean Trucks cargo fee to October 1, 2008, in order to align implementation dates with the Port of Long Beach's clean truck initiative and allow more time for distribution of radio-frequency tags and reader installation at terminal gates.

The Port of Los Angeles Clean Truck Program also includes the following provisions:

Cargo Fee Exemptions

- All privately funded 2007 compliant trucks – including retrofits, LNG, electric, alternative fuel or other acceptable “best technology” vehicles (e.g. hybrid or hydrogen) -- will be exempted from the \$35 per twenty-foot container (TEU) Clean Trucks Fee at Port of Los Angeles terminals.
- Concessionaires with privately funded 2007 compliant trucks will not be required to turn in an old truck to scrap as part of their permit agreement.
- All publicly funded LNG, electric, alternative fuel or other acceptable “best technology” vehicles will be exempted from the Clean Trucks Fee (\$35 per twenty-foot container) at Port of Los Angeles terminals.
- No exemption will be given to publicly-funded 2007 compliant diesel trucks or retrofits.
- Port of Los Angeles Clean Truck Program-funded trucks will require a truck trade-in for scrapping and must become a regular use drayage vehicle (an averaged minimum of six trips per week).

Concession Requirements

- Concessions will only be provided to Licensed Motor Carriers, not individual truck owner-operators.
- Concessionaires will pay a \$2,500 fee for a five-year permit plus an annual fee of \$100 per truck.
- All drivers of trucks being used to carry out a concession (i.e., trucks accessing port property) must be employees of the concessionaire upon the completion of a five-year transition period.
- Concessions may be revoked at any time if the Concessionaire is not compliant with the requirements for licensing, bonding, insurance, maintenance, safety or security.
- Concessionaires must agree to meet port standards for technology and efficiency (promoting the use of current or future tools like the virtual container yard).

Financing

- Financing will be provided to Concessionaires only, providing grants for up to 80 percent of the purchase of 2007 standard diesel and LNG trucks
- Low cost leasing options will be provided.
- Retrofits meeting 2007 emissions standards also will be funded in full.
- CTP financed or leased trucks must be used as full time drayage vehicles (average minimum of six trips per week)
- CTP trucks must meet CTP specifications, and must be purchased from a CTP authorized vendor

-more-

444 -- POLA Approves CTP

By offering a broader range of Clean Truck Fee exemptions, the Port of Los Angeles Clean Truck Program will encourage more rapid investment in 2007-compliant trucks. In addition, the requirement of turning in an old truck to be scrapped will be limited only to concessionaires who receive CTP funding assistance in purchasing 2007 diesel trucks. The Port also will create a **Scrap Truck Buyback Program** to help accelerate the removal of pre-1989 trucks from Port service, paying parties \$5,000 to turn in their pre-1989 trucks. Concessionaires who receive CTP-funding are not eligible for the \$5,000 Scrap Truck Buyback.

The Port also will offer a **Truck Procurement Assistance Program** for concessionaires who apply for truck funding in order to obtain the best possible truck prices through volume discount pricing agreements the Port will forge with approved Original Equipment Manufacturers (OEMs) and associated dealers – either independently or with the Port of Long Beach. Through this program the Port will identify a range of trucks with appropriate emissions reduction capabilities at discounted prices and make this range of options available to CTP program participants.

To assist Concessionaires in the transition over to an employee-based industry, the Port also will create a **Business Outreach Program** that will provide seminars to educate concessionaires on best practices in the areas of Program compliance, operational efficiency, financial management and human resources guidelines for transitioning to employees. The Business Outreach Program will also offer driver training courses and truck maintenance options. It will be open to any Port of Los Angeles concessionaire, with a preference for financing given to concessionaires with a history of drayage work.

The Port of Los Angeles is America's premier port and has a strong commitment to developing innovative strategic and sustainable operations that benefit the economy as well as the quality of life for the region and the nation it serves. As the leading seaport in North America in terms of shipping container volume and cargo value, the Port generates 919,000 regional jobs and \$39.1 billion in annual wages and tax revenues. A proprietary department of the City of Los Angeles, the Port is self-supporting and does not receive taxpayer dollars. The Port of Los Angeles – A cleaner port. A brighter future.

###

FEDERAL MARITIME COMMISSION

**Federal Maritime Commission
Washington, D.C.**

NR 08-02

Federal Maritime Commission Requests Additional Information from Los Angeles/Long Beach Agreement No. 201178

CONTACT: Florence A. Carr, Director, Bureau of Trade Analysis (202) 523-5796

FOR RELEASE - April 2, 2008

The Federal Maritime Commission announced today that it has formally requested that the parties to Agreement No. 201178, *Los Angeles/Long Beach Port/Terminal Operator Administration and Implementation Agreement*, provide additional information pursuant to 46 U.S.C. § 40304(d). This action prevents the agreement from becoming effective as originally scheduled on March 30, 2008. The agreement's effective date will be 45 days after receipt of the complete response to the request for additional information.

* * * * *

Press Contact: Karen V. Gregory (202) 523-5725; e-mail: secretary@fmc.gov

NANCY PELOSI
8TH DISTRICT, CALIFORNIA

SPEAKER OF THE HOUSE

235 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-0508
(202) 225-4965

Congress of the United States
House of Representatives
Washington, DC 20515-0508

DISTRICT OFFICE:
FEDERAL BUILDING
450 GOLDEN GATE AVENUE
SAN FRANCISCO, CA 94102-3460
(415) 556-4852
sf.nancy@mail.house.gov
www.house.gov/pelosi

April 18, 2008

Harold J. Creel, Jr., Commissioner
Federal Maritime Commission
800 North Capitol St. NW
Washington, DC 20573

A. Paul Anderson, Commissioner
Federal Maritime Commission
800 North Capitol St. NW
Washington, DC 20573

Rebecca F. Dye, Commissioner
Federal Maritime Commission
800 North Capitol St. NW
Washington, DC 20573

Joseph E. Brennan, Commissioner
Federal Maritime Commission
800 North Capitol St. NW
Washington, DC 20573

Dear Commissioners:

I write to express my support for the Clean Trucks Program, a groundbreaking initiative approved by the Port of Los Angeles on March 20.

In 2007, the Port of Los Angeles was responsible for over 22 percent of all containerized cargo brought into the country by ship. Over the past decade, as imports have skyrocketed, the Port of Los Angeles has struggled to increase its capacity due to legal challenges based on environmental and public health concerns. Port officials have worked to address air pollution problems in order to move forward with long-delayed infrastructure projects to improve capacity, and the Clean Trucks Program is a critical part of the solution.

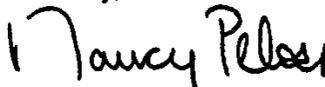
This innovative program places the financial responsibility for operating and maintaining a cleaner fleet of trucks on the trucking companies that negotiate haul rates, instead of on the truck drivers, who currently earn meager incomes as independent contractors. As a result, the program will reduce air pollution, improving public health locally—where workers and residents suffer from disproportionately higher rates of asthma and cancer—as well as regionally. The program will also increase the productivity of port trucking, reduce congestion, and strengthen port security and safety, while creating good middle-class jobs.

Since port trucking costs are a relatively small component of overall transportation costs, the increased operational costs required by this program will not be unreasonable or burdensome and will be far outweighed by the overwhelming public benefits.

The FMC has traditionally limited its consideration of a port plan to the question of whether it would decrease the supply of transportation services or unreasonably increase the costs to shippers. As our country grapples with new environmental, public health, and homeland security challenges, it is important for the FMC to consider the broader effects on public health and safety of port operations.

Thank you for giving the Clean Trucks Program your full and fair consideration as it progresses towards implementation. Please keep me informed of your actions regarding this program.

Sincerely,



NANCY PELOSI
Speaker of the House

NP:ll

THIS STATIONERY PRINTED ON PAPER MADE OF RECYCLED FIBERS



April 29, 2008

Members of the Federal Maritime Commission
c/o Karen V. Gregory
Assistant Secretary
Federal Maritime Commission
800 N. Capitol Street, SW
Room 1046
Washington D.C. 20573

**Re: FMC's Delay of Port of Los Angeles and Port of Long Beach's
Clean Trucks Program**

Dear Members of the Commission:

On behalf of the Natural Resources Defense Council and our more than 1.25 million members and e-activists nationwide, I am writing to request that the FMC halt its efforts to delay the Ports of Los Angeles and Long Beach clean trucks programs. Specifically, the Federal Maritime Commission ("FMC") is set to discuss Agenda Item Number 3 on the Closed Session agenda for the upcoming April 30th meeting, which deals with FMC Agreement No. 201178 – Los Angeles/Long Beach Port /Terminal Operator Administration and Implementation Agreement. This agenda item must be viewed within the context that the Los Angeles region suffers from some of the most intractable air pollution problems in the nation. This agreement serves as a prerequisite to cleaning up harmful air pollution from port trucks at the nations largest ports.

While the goods movement industry provides economic activity to Southern California, its benefits are juxtaposed with grave regional public health impacts. Besides the extensive regional impacts associated with the Ports' status as the largest fixed source of air pollution in Southern California, port adjacent residents suffer acute localized impacts from port operations. The South Coast Air Quality Management District ("SCAQMD") has determined that the area most polluted by toxic air pollution, which includes diesel exhaust, occurs within the vicinity of the Ports.¹ The California Air Resources Board ("CARB") has reported that the cancer risk from residing near the Ports of Los Angeles and Long Beach is 500 times higher than what the federal government deems acceptable.² A major culprit of this extensive, unfettered pollution

¹ SCAQMD, Draft Report, Multiple Air Toxics Exposure Study in the South Coast Air Basin, at 6-2 (Jan. 2008).

² CARB, Quantification of the Health Impacts and Economic Valuation of Air Pollution From Ports and Goods Movement in California, App. A in Emission Reduction Plan for Ports and Goods Movement (GMERP), at 14 (March 22, 2006). This study only examined emissions emanating on port property

www.nrdc.org

1314 Second Street
Santa Monica, CA 90401
Tel 310-434-2300 Fax 310-434-2398

NEW YORK WASHINGTON, DC SAN FRANCISCO

Members of the Federal Maritime Commission
April 29, 2008
Page 2 of 3

is the approximately 17,000 generally old, inadequately maintained frequent and semi-frequent trucks that service the Ports of Los Angeles and Long Beach. Port truck pollution is responsible for 30% to 40% of the air pollution stemming from port operations.

The public health impacts of this truck induced air pollution are well documented. As the equipment travels on roads close to where residents live, work, and play, the diesel exhaust emanating from this exceptionally old fleet of trucks exacts a large toll on residents. According to CARB, trucks are responsible for more than half of the estimated 2,400 premature deaths attributable to diesel exhaust from California freight transport in 2005.

Aside from the disastrous public health and economic impacts, the inability of the Ports to clean up this truck pollution effectively prevents the Ports from expanding their operations due to the inability to control a major source of toxic air pollution.³ Absent a workable plan to reduce truck emissions at the port, environmental and community groups will have no choice but to continue to oppose port expansion. As important as the goods coming into Port of Los Angeles and Long Beach are to the rest of the country, Californians should not and cannot continue to subsidize this industry through our health.

It is against this backdrop that we continue to be perplexed by the actions of your agency to place roadblocks for the Ports to clean up harmful truck pollution. We are particularly mystified as to why your agency is determined to prevent discussion of solutions to address this very real problem. As we understand it, the agreements on file simply allow the parties to talk to one another about solutions. While both ports have publically discussed the clean trucks program many times over the last year and half and the FMC was open to participate throughout this process, there are still many details that need to be worked out. We understand that, once the ports have finalized their plans of action, these will be filed with your agency and yet another comment period will ensue. We do not understand why the agency is so determined to block discussion; we would think that the agency would be more concerned with reviewing the actual plans, once they are finalized. We are also perplexed as to why the FMC is talking about this issue behind closed doors when the Ports have been very open in discussing cleaning up port-related pollution. Your agency has effectively precluded those impacted by your decisions from participating in this important discussion.

Cleaning up this pollution is an urgent issue, and as such, it is important that negotiations between the Ports and their resident terminals are allowed to occur as expeditiously as possible. Based on this concern, we respectfully request that the FMC summarily allow this agreement to move forward expeditiously. In fact, instead of slowing down talks of how to clean the air and make port operations cleaner and more

³ See *Natural Resource Defense Council, Inc. v. City of Los Angeles*, 103 Cal. App. 4th 268 (2002).

Members of the Federal Maritime Commission
April 29, 2008
Page 3 of 3

efficient, the FMC should encourage the rapid implementation and development of comprehensive, sustainable clean trucks programs at the ports.

We appreciate your consideration of our comments and please do not hesitate to contact me at (310) 434-2300 should you have questions about NRDC's position on the need to clean up the deadly diesel pollution that harms all residents in the Los Angeles region.

Sincerely,



David Pettit
Senior Attorney

cc: Senator Daniel Inouye
Congressman James Oberstar
Senator Frank Lautenberg
Congressman Elijah Cummings
Senator Barbara Boxer
Senator Dianne Feinstein
Congresswoman Nancy Pelosi
Congresswoman Laura Richardson
Mary Nichols, Chair of the California Air Resources Board
William Burke, Chair of the South Coast Air Quality Management District
David Freeman, President, Board of Harbor Commissioners, Port of Los Angeles
Mario Cordero, President, Board of Harbor Commissioners, Port of Long Beach

201170



FEDERAL MARITIME COMMISSION
800 North Capitol Street, N.W.
Washington, D.C. 20573-0001

Phone: (202) 523-5796
Fax: (202) 523-4372

May 16, 2008

C. Jonathan Benner, Esq.
Troutman Sanders, LLP
401 9th Street, N.W.
Suite 1000
Washington, D.C. 20004

Re: The Los Angeles and Long Beach Port Infrastructure and
Environmental Programs Cooperative Working Agreement,
FMC Agreement No. 201170

Dear Mr. Benner:

Through the medium of various decisions previously taken by the Harbor Boards and adoption of individual port schedule language, the Federal Maritime Commission understands that the Ports of Los Angeles and Long Beach have finalized details of their respective Clean Truck Programs (CTP). It is also our understanding that the Ports intend to begin implementing their Clean Trucks Programs on or before October 1, 2008, by commencing truck registry programs, as just one example.

As the Ports are aware from prior discussions with Commission staff on the topic, appropriate amendment(s) to the *Los Angeles and Long Beach Port Infrastructure and Environmental Programs Cooperative Working Agreement* ("the Agreement") describing the key elements of those joint programs must be filed prior to the Ports' implementation of the Clean Truck Programs. Section 5 of the Shipping Act of 1984, as amended (the "Shipping Act"), 46 U.S.C. 40302, requires "every agreement" with respect to activities under section 4 of the Shipping Act be filed with the Commission, irrespective of whether the agreement parties seek or require the corresponding benefit of the antitrust exemption conferred under section 7 of the Shipping Act. Likewise, the Commission has a clear statutory obligation under section 6 to fully analyze the likely impact of every such agreement filed with it. As a procedural pre-requisite and aid for this required analysis, the Commission's regulations mandate that a filed agreement must "be clear and definite in its terms, must embody the complete, present understanding of the parties, and must set forth the specific authorities and conditions under which the parties to the agreement will conduct their operations," 46 CFR § 535.402. Therefore, the elements of the CTP should be described in the Agreement with sufficient detail to allow the Commission to conduct the necessary economic analysis.

Parties to the Agreement have been operating under authority contained in Article V that authorizes them to "confer, discuss, exchange information and agree on a voluntary basis with respect to rates, charges, operating costs, practices, legislation, regulations, and terminal operations, including trucking, rail and vessel operations, regarding matters for the funding, establishment and construction of port-related transportation infrastructure projects and

environmental programs.” In certain instances, the Commission has been made aware of the Parties’ expectations that specific details of the Ports’ Clean Truck Programs have been or will be published in the respective schedules of the Port of Los Angeles (Proposed Amendments to Los Angeles Tariff No. 4, Sections 20 and 21) and the Port of Long Beach (Tariff No. 4, Rule 34-J, Section 10, “Clean Air Action Plan”(published April 11, 2008, effective date July 1, 2008); Rule 34-K, Section 11, “Infrastructure Fee” (published April 11, 2008, effective date July 1, 2008).

Based on Article V, Section D of the Agreement and representations made to Commission staff by filing counsel when the original Agreement was filed, it is our understanding that the parties would amend the Agreement prior to acting to carry out any joint projects or programs. We wish to advise the Parties that the Ports’ schedule publications, filed severally, do not satisfy the statutory requirements of sections 5 and 6 of the Shipping Act. Neither do we believe that the Clean Truck Programs adopted by the Ports fall under the filing exemptions contained in section 535.302, or are among the activities that may be conducted without further filing provided in section 535.408.

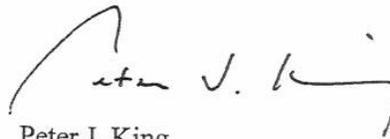
We urge you to file all modification(s) to the Agreement as soon as possible, in light of the necessary review period specified under section 6(c) for any amendments filed and the Ports’ interest in a smooth transition to the proposed Clean Truck Programs. An early filing will ensure that the Commission has adequate time to review the modification and its effects prior to the date on which the Parties intend to take action to implement these further, as yet unfilled, agreements.

Please do not hesitate to contact either, or both, of us if you have any questions.

Sincerely,



Florence A. Carr
Director, Bureau of Trade Analysis

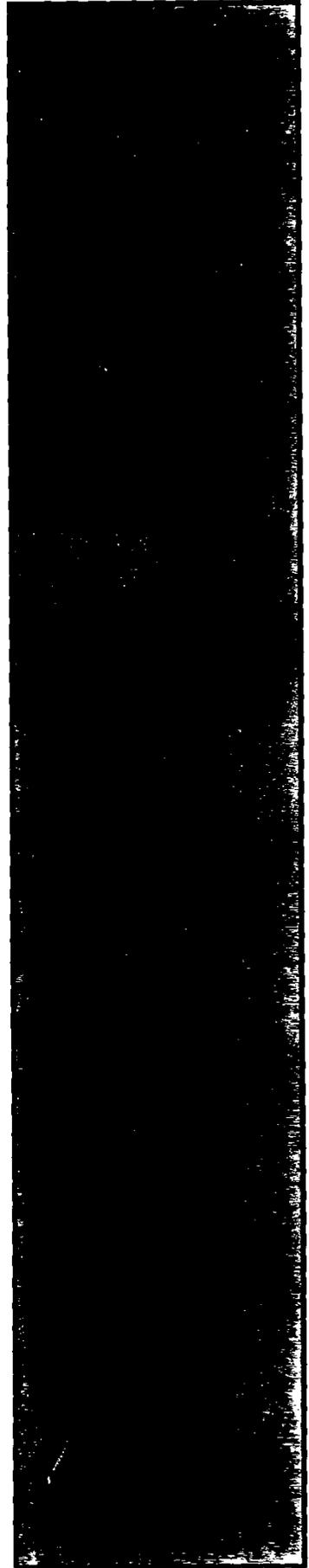


Peter J. King
Acting General Counsel



Clean Truck Program Overview for Licensed Motor Carriers

May 26, 2008



Purpose of these materials

Purpose of Los Angeles Clean Truck Program (CTP)

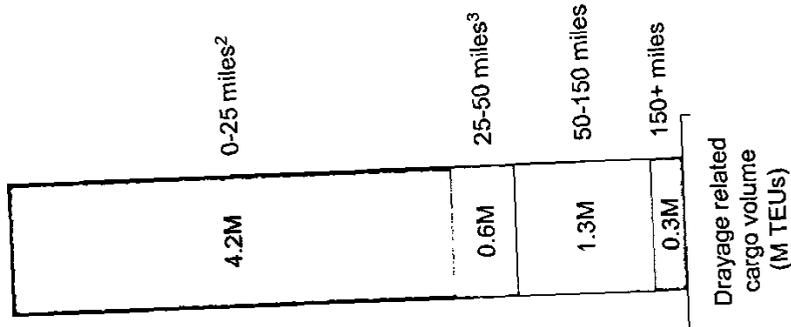
The Port of Los Angeles revitalization of the drayage represents a substantial revitalization of the drayage and "green" market, allowing it to be both sustainable and "green"

The enclosed materials are intended to describe the CTP for existing and potential LMCs and help address their questions and concerns about

- How and where they can participate i.e. which hauls, how many trucks
- The advantaged economics and how the CTP supports adoption and optimal use of alternative fuel technology
- Overall systems economics for a new or existing LMC in the market

75% of drayage volume is for trips of 50 miles or less

	Description of haul types	Average hrs/haul ¹	Average \$/haul ¹	2006 POLA drayage-related cargo volume ²
0-25 miles	<ul style="list-style-type: none"> • <u>Very short-haul</u>: end destination within 25 miles • <u>Near-dock and Off-dock rail</u>: drayage to near-dock (ICTF) and off-dock (Hobart facility) railyards • <u>Transload to rail</u>: warehouses and distribution centers within 25 miles where goods are resorted 	1.9	\$79.75	4.2M
	<ul style="list-style-type: none"> • <u>Short-haul</u>: end destination 25-50 miles from the ports 	4.6	\$195.30	0.6M
	<ul style="list-style-type: none"> • <u>Medium-haul</u>: end destination 50-150 miles from the ports 	9.2	\$390.59	1.3M
150+ miles	<ul style="list-style-type: none"> • <u>Long haul</u>: end destination greater than 150 miles from the ports 	19.8	\$843.68	0.3M



CTP is configured to make Alternative Fuel (LNG) the advantaged choice

A Operating costs

B Environmental Cargo Fee (ECF)

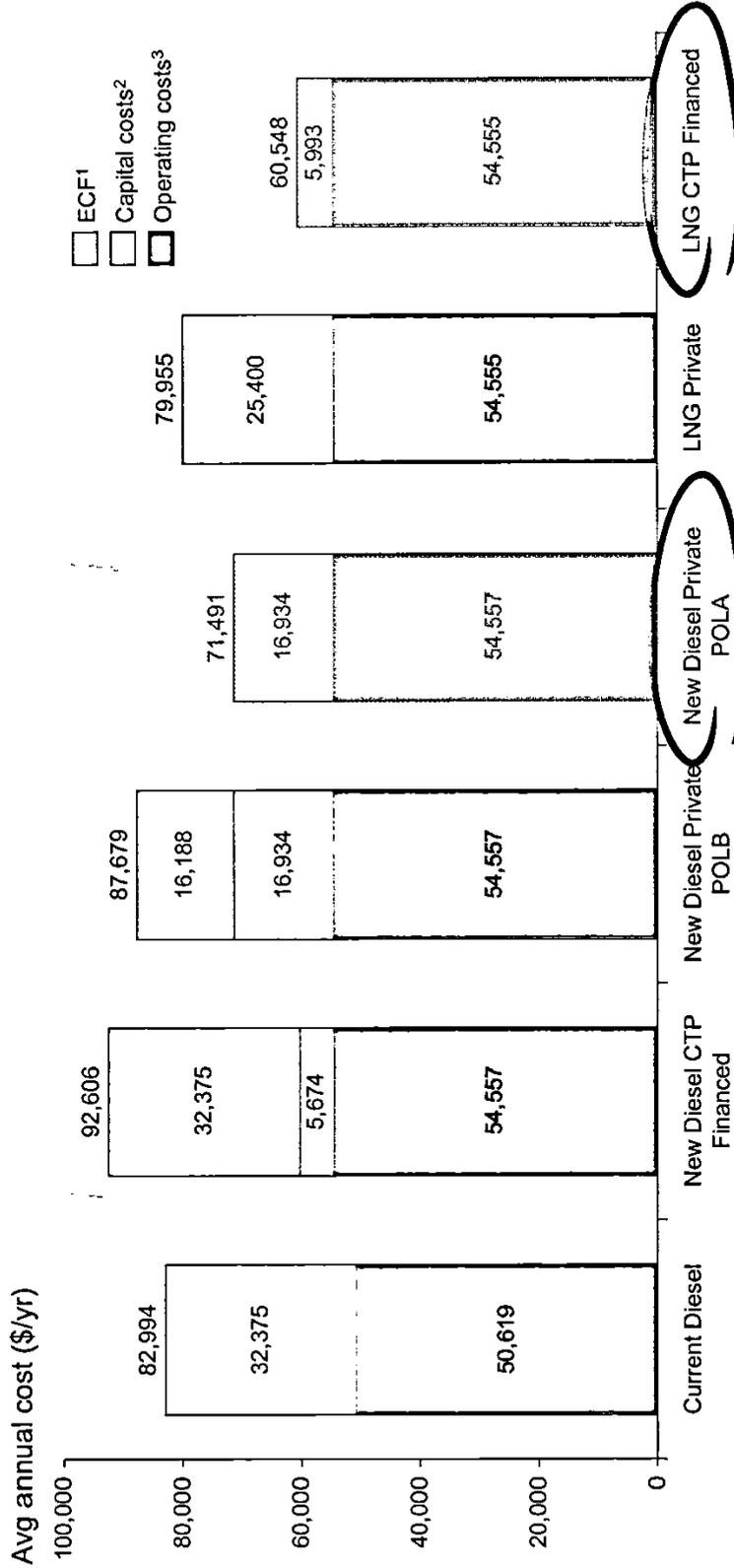
C Capital costs

D Indirect costs and benefits

Key conclusions: Cost structure of new diesel vs. LNG

- **Minimal operating cost difference between LNG and new diesel**
 - Insurance and maintenance more expensive for relatively new LNG technology, but cost of fuel relatively more expensive for diesel
- **For POLA, enforced only on current dirty diesel and CTP financed new diesel**
- **LNG trucks priced higher than new diesel, but differential offset by grants, leasing structure, and rebates**
- **Lowest capital cost for CTP financed LNG (either grant or lease)**
- **Greater risks for LNG given relative lack of production, infrastructure, and proven performance**

ECF exemption and low capital cost make private diesel, and CTP financed LNG the lowest cost options



For trucks servicing POLA, privately financed diesel and CTP financed LNG represent the most attractive options

1. Assumes two ECF trips per day, 5 days/week, 50 weeks/yr 2. Bars represent \$150K LNG truck (CTP financed with \$100K grant) and \$100K diesel truck (CTP financed with \$60K grant) 3. Assumes \$3.95/gal for diesel and \$3.30/gal for LNG driving 45,000 miles/yr.

LMC operating LNG trucks is competitive with all other participants in the market ...

P&L per truck (\$)	Small LMC IOO Old diesel	Small LMC IOO CTP new diesel	Large LMC Employee Private new diesel	Large LMC Employee CTP LNG
Revenue ¹	107,100	113,091	235,074	222,470
Operating costs ²	(50,619)	(54,557)	(66,435)	(66,435)
Labor (driver) costs ³	(24,351)	(20,413)	(97,269)	(97,269)
Capital costs ⁴	-	(5,674)	(16,934)	(5,993)
Overhead ⁵	(26,775)	(26,775)	(41,650)	(41,650)
Operating income Op margin (%)	5,355 5.0%	5,672 5.0%	11,754 5.0%	11,124 5.0%
# of hauls / year ⁶	684	684	1,183	1,183
Revenue/haul (\$)	156	165	198	188
ECF/haul ⁷ (\$)	65	65	199	188
Cost to BCO/haul	\$221	\$230	\$199	\$188

With higher efficiency cost/haul could be much lower

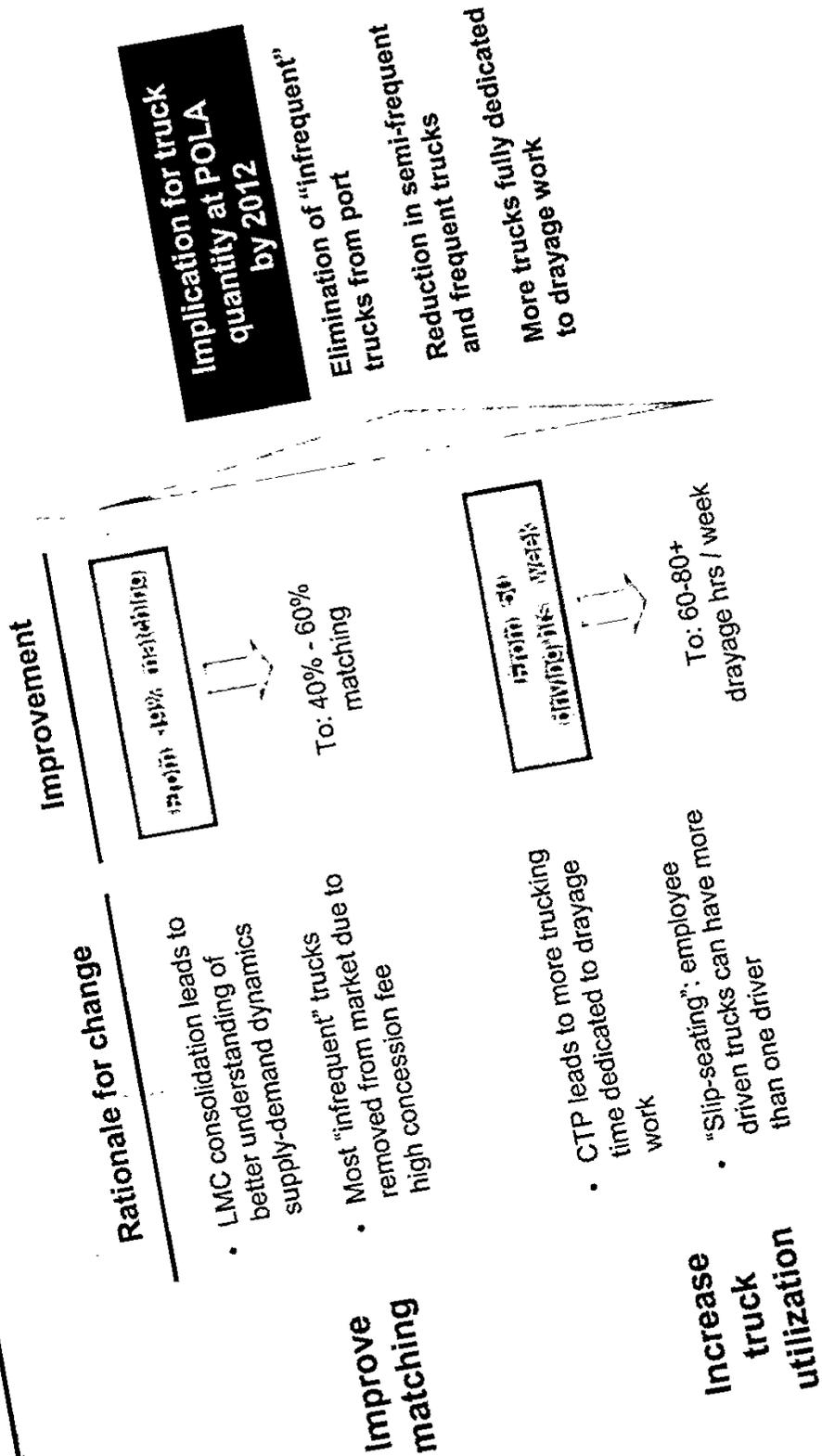
1. Assumes truck performs only 0-50 mi haul drayage. 2. Assumes \$3.95/gal for diesel and \$3.30/gal for LNG, with miles varying by driving time. 3. IOO receive 70% of revenues, cover operating costs. Employee labor cost accounts for options that use >1 driver/truck. 4. \$150K LNG truck (CTP financed with \$100K grant) and \$100K diesel truck (CTP financed with \$80K grant). 5. Varies by number of drivers. 6. Number of 0-50 mile hauls possible given efficiency and 2.2 hrs/haul. 7. Average 1.8TEU/haul.

... And at or cheaper than same trips in POLB

P&L per truck (\$)	Privately financed new diesel		CTP financed LNG	
	POLB (100s)	POLA (employees)	POLB (100s)	POLA (employees)
Revenue ¹	124,923	235,074	113,408	222,470
Operating costs ²	(54,557)	(66,435)	(54,555)	(66,435)
Labor (driver) costs ³	(20,413)	(97,269)	(20,415)	(97,269)
Capital costs ⁴	(16,934)	(16,934)	(5,993)	(5,993)
Overhead ⁵	(26,775)	(41,650)	(26,775)	(41,650)
Operating income	6,244	11,754	5,779	11,124
Op margin (%)	5.0%	5.0%	5.0%	5.0%
# of hauls / year ⁶	788	1,183	788	1,183
Revenue/haul (\$)	158	199	147	188
ECF/haul (\$)	32	199	64	188
Cost to BCO/haul	\$190		\$209	\$188

1. Assumes truck performs only 0-50 mi haul drayage. 2. Assumes \$3.95/gal for diesel and \$3.30/gal for LNG, with miles varying by driving time. 3. 100 receive 70% of revenues, cover operating costs. Employee labor cost accounts for options that use >1 driver/truck. 4. Assumes \$100K diesel truck and \$150K LNG truck with \$100K grant (assuming lease option will yield similar results). 5. Varies by number of drivers. 6. Number of 0-50 mile hauls possible given efficiency (100s: 45 hrs/wk, 22% matching, Employees: 70 hrs/wk, 50% matching) and 2.2 hrs/haul

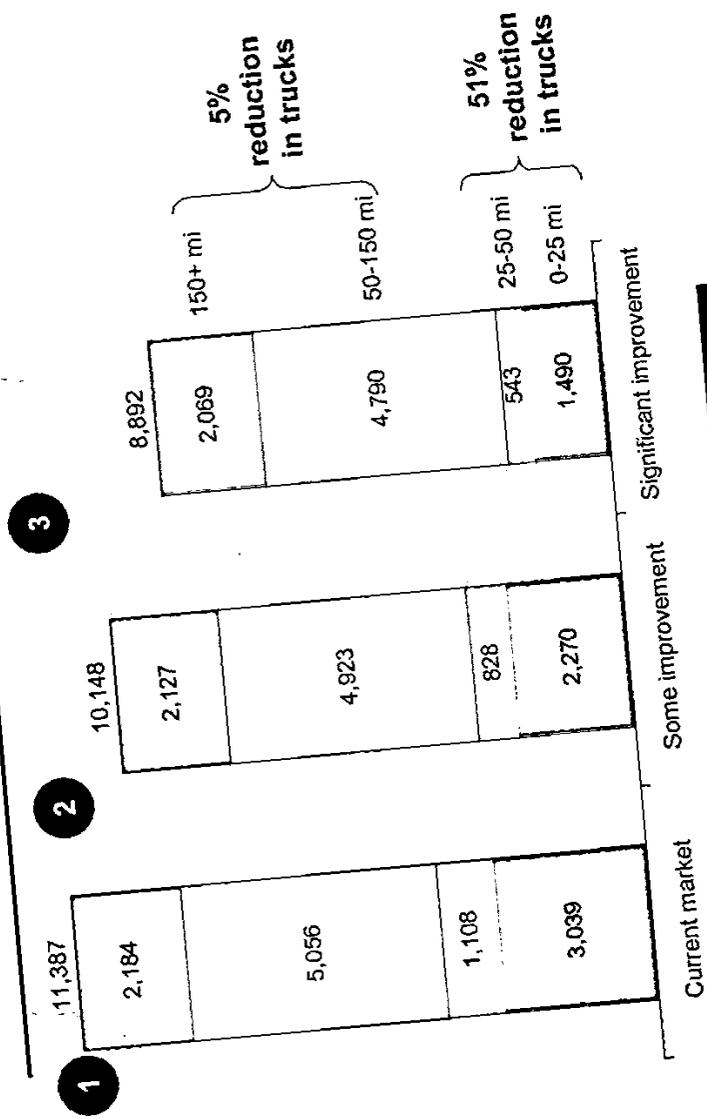
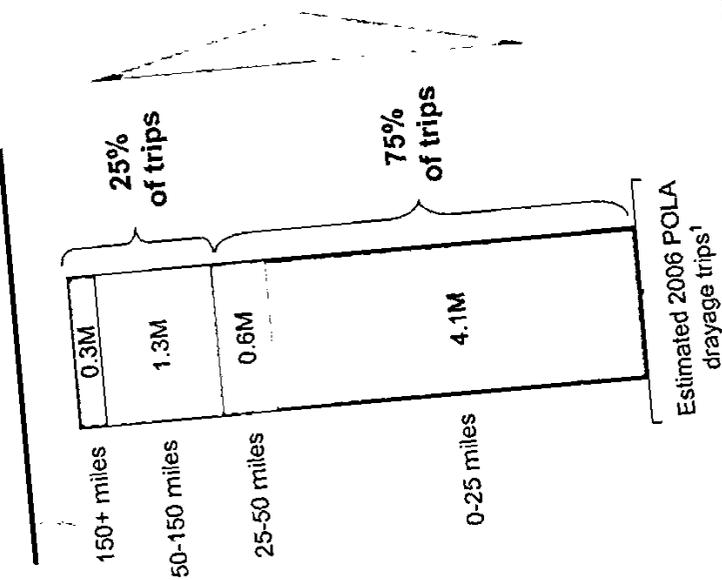
Improved drayage efficiency could significantly reduce needed truck volumes and decrease costs



With efficiency improvements ~2,000 trucks could handle all short haul drayage – 75% of POLA cargo volume

Number of FT equivalent trucks² needed to move 2006 POLA container volume

Share of 2006 POLA drayage trips¹ by haul distance



Short haul is also the ideal drayage focus for LNG and alt fuel trucks

1. Based on 3.5M containers moved through POLA in 2006 and 18.7% matching overall. 2. Hypothetical number where each truck does 100% POLA drayage work, each truck completes hauls only within one distance range
Source: Moffatt and Nictrol Container Diversion and Economic Impact Study, Goodchild and Mohan Port Productivity: Estimating the Impact of the CTP
05-26_LMC Overview_v3.ppt

RECEIVED

2008 MAY 28 PM 12: 03

May 28, 2008

REC-141

MAY 28 11 11

By Messenger OF ECON & AGMT ANAL

FEDERAL MARITIME COMMISSION

Ms. Karen V. Gregory
Secretary
Federal Maritime Commission
800 North Capitol Street, N.W.
Room 1046
Washington, D.C. 20573

RE: Request for Expedited Consideration - FMC Agreement No. 201178, Los Angeles/Long Beach Port/Terminal Administration and Implementation Agreement

Dear Ms. Gregory:

The undersigned counsel, on behalf of the parties to the above-referenced agreement, hereby request that the Commission shorten the review period for the above-captioned agreement, allowing the agreement to go into effect at the earliest possible date.¹ As explained below, there is good cause for the Commission to grant this request.

Approximately 100 days have passed since the initial filing of the Agreement and it has been reviewed and analyzed in great detail by the Commission. The Commission has received responses to approximately 50 inquiries seeking additional information from the Agreement parties.

Key requirements of the Ports' Clean Truck Program become effective on June 30, 2008 (Drayage Truck Registry), August 1, 2008 (Compliance Reader Installation) and October 1, 2008 (Pre-1989 Truck Bans and Clean Truck Fee). Preparation requires review and consultation with marine terminal operators on a number of technology, systems, and other operational issues. The parties believe that enabling discussions to commence on these issues as soon as possible will further the objective of better-designed and functioning systems for all port users and substantially facilitate the transition to the use of clean trucks in the two ports.

The parties face significant time constraints in preparation for the implementation of the Ports' Clean Truck Program ("CTP"). To date (as noted in our May 15th response to the Commission's request for additional information), the Ports and WCMTOA have held only preliminary and introductory discussions regarding whether and how WCMTOA would play a role in the implementation of the Clean Truck Program. Substantive discussions have not been

¹ See, 46 CFR § 535.605 (b).

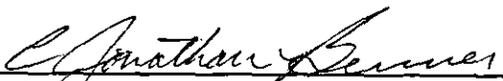
Ms. Karen V. Gregory --

May 28, 2008

Page 2

undertaken because the instant agreement is not yet in effect.² This has left the Ports and their valued tenants in the position of not being able to have a productive dialogue about the operations and implementation of this important and far-reaching environmental initiative. Early Commission action clarifying that the parties can move forward in the coming week, or as soon as possible, will be most helpful in alleviating the operational urgency created by the immediate need to ensure effective use of data compiled in the Drayage Truck Registry and other operational elements that support the Clean Truck program.

Granting the request for expedited review does not impact the Commission's statutory authorities or remedies regarding the ongoing oversight of the agreement; accordingly, neither the Commission nor any interested parties will be disadvantaged in any way by allowing the agreement to become effective and the parties' operational and technical discussions to commence.



C. Jonathan Benner
Matthew Thomas
Counsel to the Port of Los Angeles
and the Port of Long Beach



David Smith
Wayne Rohde
Counsel to the West Coast MTO Agreement

cc: (via e-mail)

Florence Carr
Peter King, Esquire

² This request should not be regarded as a waiver of the parties' view that the Agreement became effective on the 45th day after its filing with the FMC in the absence of the issuance by that time of any requests for additional information. Nonetheless, the Agreement parties are not implementing the Agreement prior to a clear indication from the Commission that the agreement is effective.