



**NOTICE OF COURT DECISION AFFECTING THE PORT
OF LOS ANGELES CLEAN TRUCK PROGRAM
EFFECTIVE APRIL 29, 2009**

On Wednesday, April 29, 2009, the United States Federal District Court for the Central District of California issued a preliminary order in the *American Trucking Associations vs. City of Los Angeles* case to the Port of Los Angeles and the Port of Long Beach affecting the ports' Clean Truck Programs. The court ordered the ports to refrain from implementing or enforcing certain provisions in their respective Concession Agreements pending the final resolution of the case. This means that, starting April 29, 2009 the Port of Los Angeles will refrain from enforcing the suspended elements in its Concession Agreement as directed by the Court, until further notice. The temporarily suspended provisions are set forth in the Question and Answer (Q & A) section below.

Note, these issues will be thoroughly considered by the Federal District Court in a full trial before the Court, scheduled for February 2010. Until resolution of the full case, the Court has directed the Port of Los Angeles to suspend enforcement of these provisions.

The Q & A section below will answer general questions you may have. Do not hesitate to contact the Port of Los Angeles through the Clean Truck Program help line 866-721-5686 if you have any further questions.

IMPORTANT!

**Q & A REGARDING IMPACT OF PRELIMINARY COURT ORDER ON THE
CLEAN TRUCKS PROGRAM AND CONCESSIONS**

Q: What does the injunction mean to the Clean Truck Program?

A: On Wednesday, April 29, 2009, the United States Federal District Court for the Central District of California issued a preliminary order that the Ports of Los Angeles and Long Beach shall refrain from implementing and enforcing certain elements of their respective Concession Agreements under the Clean Truck Program pending final resolution of the *American Trucking Associations vs. City of Los Angeles* court case. A trial of the full matter is scheduled for February 2010.



Q: What elements of the Concession Program are affected by the injunction?

A: The items of the Concession Agreement which POLA will refrain from implementing and enforcing under the Court's ruling are set forth on the list below. The remainder of the Concession Agreement shall continue in full force in effect and shall continue to be enforced. Also, the progressive truck phase-out and the Clean Truck Fee will continue to be enforced by the Port under Section 20 of Port of Los Angeles Tariff No. 4.

Q: What are the next steps in the court case?

A: The Court's order is a preliminary order based upon limited, preliminary information submitted by the parties last year. The parties involved will now have the opportunity to conduct discovery and prove their case on the merits at trial, which is scheduled for February 2, 2010.

Q: What happens to Concession fees?

A: The Port shall refrain from collecting the \$2500 concession fee and \$100 per truck annual fee on a going-forward basis.

Q: What will happen to the Clean Truck Fee?

A: The Clean Truck Fee will continue to be assessed on containerized merchandise drayed by Drayage Trucks unless exempt as specified in Section 20 of Port of Los Angeles Tariff No. 4, which was not affected by the court ruling, and shall be collected by PortCheck.

Q: Does the ruling affect the Truck Ban?

A: The Port of Los Angeles shall refrain from implementing and enforcing the Concession Agreement requirement that a Concessionaire's trucks be modernized to comply with the truck phase-out requirements of Section 20 of Port of Los Angeles Tariff No. 4. However, the truck phase-out requirement remains in effect and shall be enforced by the marine terminal operators under Section 20 of the Tariff, which was not affected by the court order.

Q: How does the ruling affect the Drayage Truck Registry?

A: Licensed Motor Carriers will still be required to enroll trucks in the Drayage Truck Registry and confirm concession status. However, the Port will refrain from collecting the \$100 per truck annual fee.



ITEMS OF THE PORT OF LOS ANGELES CONCESSION AGREEMENT SUSPENDED EFFECTIVE APRIL 29, 2009 UNTIL FURTHER NOTICE

- **Section III(d) - Driver Hiring:** The Port shall refrain from enforcing the Concession Agreement requirement that Concessionaires transition to employee drivers, or post or consult job openings for truck drivers at First Source Workforce Development Office.
- **Section III(e) - Clean Truck Tariff:** The Port shall refrain from enforcing through its Concession Agreement, the requirement that Concessionaires comply with Port of Los Angeles Tariff No. 4, Section 20 regarding the Clean Truck Program. The marine terminals will continue to enforce the Tariff on Concessionaires at their property boundary and at their gates.
- **Section III(f) – Compliance with Parking Routes and Routing Restrictions:** The Port shall refrain from enforcing the Concession Agreement requirement that Concessionaires (i) submit an off-street parking plan, and (ii) ensure that Permitted Trucks comply with the plan and do staging off public streets and away from residential districts, and (iii) are contractually required to comply with parking, truck route, and permit requirements specified by local and state authorities. Note that these laws will continue to be enforced by the applicable State and local law enforcement agencies.
- **Section III(h) – Compliance with Truck Safety and Operations Regulations:** The Port shall refrain from enforcing the Concession Agreement requirement that Concessionaires keep and report any records *other than* driver qualifications, driver training, vehicle maintenance, safety inspection, controlled substances and alcohol testing and hours-of-service for all employee drivers and contractor drivers.
- **Section III(n) – Financial Capability:** The Port shall refrain from requiring, in any Concession Applications received on or after April 29, 2009, the submission of financial information, as the Port will not evaluate those applicants for financial capability to perform their obligations under the Concession Agreement.
- **Schedule 2, Section 2.1 - Concession Fees:** The Port shall refrain from collecting a \$2,500 concession fee with Concession Applications submitted on or after April 29, 200, or \$100 per truck annual registration fee for Permitted Trucks entered in the Drayage Truck Registry on or after April 29, 2009.
- **Schedule 2, Section 2.2 and 2.3 – Reporting and Audits:** The Port shall refrain from enforcing the Concession Agreement reporting requirements or periodic reviews and audits, except to the extent consistent with the Court's order, such as information related to a Concessionaire's compliance with non-suspended safety-related provisions of the Concession Agreement that may be enforced while the Concession Agreement is in effect.



- **Schedule 3 – Indemnity and Accident Reporting:** The Port shall refrain from enforcing the indemnity in Section 3.1 or accident reporting in Section 3.10.
- **Schedule 4, Section 4.2 – Events of Default:** The Port of Los Angeles will refrain from enforcing the following events of default in the Concession Agreement:
 - (a) Any act or failure to act which operates to deprive Concessionaire any of the rights, powers, licenses, permits or authorities necessary for the proper conduct and operation of Drayage Service in accordance with applicable laws;
 - (b) Any failure to comply with the terms and conditions of the Concession, except to the extent it requires compliance with non-preempted and severable provisions of the Concession agreement;
 - (c) Abandonment or discontinuance of Drayage Service for 60 consecutive days;
 - (f) Any fraud or misrepresentation in the Concession application, information or data submitted to the Port required under the Concession, except to the extent the information it requires is related to motor vehicle safety provisions of the Concession agreement;
 - (g) Any effort to misrepresent that a Drayage Truck complies with Section 20 of the Port Tariff No. 4, to disable or fail to maintain in proper operation emission-control equipment that has been installed in Drayage Trucks in Drayage Service, or any use of a Drayage Truck in Drayage Service that does not comply with Section 20 of Port Tariff No. 4;
 - (h) Any assignment or transfer of this Concession or substantial change in the ownership and control of Concessionaire that is not in accordance with Section 1(a) of the Concession agreement;
 - (i) The bankruptcy of Concessionaire, or the appointment of a receiver for Concessionaire, or assignment of the Concession for benefit of creditors;
 - (j) The failure to pay or repeated late payment of fees due under Schedule 2, Concession Fees;
 - (k) Violation of a Port Tariff, a City Ordinance, a State law, or a Federal law, except to the extent it requires compliance with provisions and laws specifically address to motor vehicle safety.

EXCEPT FOR THE SPECIFIC ITEMS LISTED ABOVE, THE REMAINDER OF THE CONCESSION AGREEMENT IS IN FULL FORCE AND EFFECT.