

## **Judge kills parts of ports' clean-truck program**

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By Kristopher Hanson, Staff Writer

LOS ANGELES - A federal judge Monday shot down several controversial measures included in the ports' clean-truck program, ruling that local authorities cannot implement an employee-driver mandate or place parking restrictions on trucks, among other measures, pending the outcome of a trial later this year.

While the ruling does not affect a ban on older, pollution-belching diesel rigs in and around the harbor, port authorities and their allies nevertheless saw Monday's action as a potential setback in their effort to reshape trucking in the nation's busiest port complex.

Snyder issued a preliminary ruling Monday, and is expected to release a full explanation of her decision later this week. A trial, meanwhile, has been set for Dec. 15.

"For the long-term air quality benefits our Clean Truck Program delivers to every Southern Californian, we are confident that Judge Snyder will weigh into her deliberations the program's phenomenal success to date," said Los Angeles Port Executive Director Geraldine Knatz. "In its entirety, our Clean Truck Program is designed to ensure that our port truck system remains clean, safe and secure well into the future."

The ruling by U.S. District Court Judge Christina Snyder temporarily prevents the ports' from enforcing several provisions in their truck plans, including a requirement that trucking companies give hiring preference to local drivers and motor carriers in Long Beach make health insurance available to drivers.

The American Trucking Association, which filed the suit in mid-2008, considers elements of both ports' clean-truck plans an "illegal" attempt to skirt federal trade laws and overturn the Motor Carrier Act of 1980, which deregulated the trucking industry.

They hailed Monday's ruling as a victory for business, truck drivers and the environment.

"ATA never opposed any of the environmental goals of the ports' Clean Trucks Plan, just components that illegally regulated the drayage industry at the Ports," Robert Digges Jr., ATA Vice President and Chief Counsel

Backed by environmentalists and labor groups, L.A. Mayor Antonio Villaraigosa and the L.A. port had pushed for a provision requiring harbor-area trucking companies gradually take responsibility for the purchase and maintenance of new, low-emission trucks by January 2013.

The approach, which port authorities argued was needed to shift the burden of expensive new trucks off low-wage drivers in years to come, was supported by President Barack Obama and California's entire Democratic Congressional delegation.

But the plan hit roadblocks almost from its inception.

In Long Beach, the employee requirement was scrapped when Mayor Bob Foster and port commissioners sided with trucking companies and shippers in protecting the "independent owner-operator" business model that developed in the wake of industry deregulation.

Under this system, contract drivers are hired by third-party motor carriers, of whom there are roughly 1,000 licensed to work in the harbor, and paid by the load in the absence of any regular schedule.

Currently, about 90 percent of truckers hauling goods to and from the waterfront are contractors and own their own trucks.

Drivers are also responsible for their insurance, fuel, maintenance and license fees.

The employee mandate would have, in effect, cut out the middle-man role now played by motor carriers and made them direct employers of drivers.

Since the employee mandate was first proposed in late 2006, trucking companies, shippers and retailers have been vehemently opposed to the plan, denouncing the measure as anti-competitive, unconstitutional and unfair.

In August, after the Los Angeles port refused to discard the employee mandate and Long Beach failed to remove a few other industry-opposed stipulations in their version, the American Trucking Association sued both ports in federal court.

Their arguments were initially rejected by Judge Snyder during a hearing in September, but upheld in a March 20 appeal hearing by a three-judge panel of the Ninth Circuit Court of Appeals.

In that ruling, the appeals court sided strongly with industry, who wrote that requirements on trucking companies to own their fleets could produce "irreparable harm" to motor carriers stationed around San Pedro Bay.

"We see little (merit) in those threadpaper arguments, which denigrate small businesses and insist that individuals should work for large employers or not at all," the ruling stated.

The appeals court then ordered Judge Snyder to reconsider ATA's request for an injunction.

Snyder made her tentative ruling Monday, and is expected to uphold the decision later this week.

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