



NATURAL RESOURCES DEFENSE COUNCIL

June 25, 2007

Dr. Geraldine Knatz
Port of Los Angeles
Email: caap@pola.com

Richard D. Steinke
Port of Long Beach
Email: caap@polb.com

RE: Clean Trucks Program

Dear Dr. Knatz and Mr. Steinke:

On behalf of the Natural Resources Defense Council ("NRDC") and the Coalition for Clean Air, we submit this comment letter on the Clean Trucks Program ("CTP"), which is part of the San Pedro Bay Ports Clean Air Action Plan ("CAAP"). In recent weeks, various opponents of the CTP have raised objections to the Ports of Los Angeles and Long Beach's (collectively "Ports") fleet modernization efforts. While some of the criticism has been instructive and helpful in crafting a solid program to address the failures of port trucking, some criticisms and suggested approaches for cleaning up the fleet will not lead the ports onto a viable path to an effective and efficient system for port trucking.

I. Statewide regulations are important, but state standards should not inhibit the Ports from creating their own program to protect residents from harmful air pollution.

At the outset, it is important to note that the NRDC and Coalition for Clean Air support the current framework of the CTP that the Ports have presented. Even though many of the details still need to be worked out,¹ such as use of alternative fuels, we support the use of a concessionary approach that requires companies to employ their drivers. On the flip side, some opposition to the CTP has arisen recently. Some opponents have argued that the Ports' cannot enter into contracts with the companies that enter their lands. These opponents argue that local ports' hands are tied in trying to effectively fix the environmental, economic and security problems associated with port drayage trucking in the Southland. Contrary to these arguments against the Ports' approach to modernization, it is well within the Ports' authority to impose contractual conditions on trucks entering onto their land.

¹ As more details about the environmental components of the program are released in the upcoming weeks, we will provide further feedback on how to strengthen the fleet turnover provisions to achieve greater emissions reductions.

Some have even suggested that the Ports should simply rely on a statewide standard passed by CARB to reduce pollution. The port truck and in use heavy duty truck rules are slated to be adopted in 2008 and 2010 respectively. However, it is not unusual for CARB rules to be delayed (e.g. harborcraft rule), so these regulations may not be adopted until later than these target dates. Given that the Ports have set ambitious benchmark goals for reducing pollution from trucks, waiting until CARB adopts its regulations on trucks will undoubtedly cause the ports to miss these targets. Simply stated, some entities appear to be trying to derail the ports from meeting emissions reductions targets for trucks before the CAAP implementation even begins.

Missing the targeted reductions is not an option for the Ports. Environmental groups and community groups have long advocated for the Ports to clean up their operations. Since the CTP is the first major step since adoption of the CAAP, it is imperative that the Ports live up to their promise to reduce impacts on residents adjacent to the Ports and along the trade corridors where these trucks travel.

Beyond the localized health risk that port drayage trucks impose on communities adjacent to trade corridors, there is also great concern that failure of the Ports to achieve the emissions reduction benchmarks laid out in CAAP will impede the South Coast Air Basin in its need to attain the Particulate Matter less than 2.5 micrometers in diameter ("PM2.5") standard by 2014. The South Coast Air Quality Management District ("SCAQMD") has indicated that it is relying on the ports to achieve the CAAP targets to meet these federal standards. In addition to the severe public health impacts that result from not meeting the National Ambient Air Quality Standards ("NAAQS"), failure to achieve the PM2.5 standard on time could mean the loss of billions of dollars in federal transportation funding for our region.² In examining all of the options presented to the Ports to address the problems with port trucking, utilizing a concessionary approach that requires companies employ their drivers is the most effective path to modernization of these vehicles at the Ports.

II. The employee component of the program is important to modernizing the twin Ports' fleets.

Some opponents of the CTP argue that the employee component is not critical to the CTP. Instead, they argue that the Ports should continue the status quo of heavy reliance on independent owner operators. NRDC and CCA believe that the status quo is not a viable means to achieve the Ports' ambitious goal of modernizing the fleet. There are several reasons for this position.

a. Port areas register a higher than average number of violation under the Heavy-Duty Vehicle Inspection Program.

It is our understanding that there are increased rates of violations of air pollution laws for trucks near the ports. In speaking with CARB enforcement staff, the Ports and the Borders are areas with higher than average incidences of violations. The following charts indicate the higher numbers of violations.

² 42 U.S.C. § 7509(b)(1).

From California Air Resources Board, 2005 Report of Enforcement Activities (*available at <http://www.arb.ca.gov/enf/reports/reports.htm>*)

Compare statewide numbers:

Table C-1
Heavy-Duty Vehicle Inspection Program

Number of Inspections	17,243
Number of Violations	1,461
Failure Rate	8%
Appeals Received/Closed	14/10
Violations Closed	881
Current HDVIP II Penalties Assessed	\$429,000
Current HDVIP II Penalties Collected	\$270,525
Delinquent HDVIP I/II Citations Closed	319
Delinquent HDVIP I/II Penalties Collected	\$146,939
Total HDVIP I/II Penalties Collected	\$417,464
Trucks Held under VC 27159 by CHP*	44

*If a citation is in delinquent status and is encountered during a roadside inspection, under

With:

Table C-8
Ports and Environmental Justice Inspections

Road Side Inspections	47
HDVIP Inspections*	8134
HDVIP Citations*	601
HDVIP NOV*s*	172
Total Violations	773

*Note: The figures in this table are integrated in Table C-1

From California Air Resources Board, 2006 Report of Enforcement Activities (*available at <http://www.arb.ca.gov/enf/reports/reports.htm>*)

Compare statewide numbers:

Table C-1
Heavy-Duty Vehicle Inspection Program

Number of Inspections	17,585
Number of Violations	703
Failure Rate	4.3%
Appeals Received/Closed	17/17
Violations Closed	840
Current HDVIP II Penalties Assessed	\$205,200f
Current HDVIP II Penalties Collected	\$199,857.00
Delinquent HDVIP I/II Citations Closed	243
Delinquent HDVIP I/II Penalties Collected	\$121,057.66
Total HDVIP I/II Penalties Collected	\$320,914.66
Trucks Held under VC 27159 by CHP*	58

With:

Table C-8
Ports and Environmental Justice Inspections

Road Side Inspection Events	71
Enforcement Program Inspections*	5772
Enforcement Program Violations*	881

Note: The figures in this table are integrated in Table C-1

***Please note that the total number of violations in C-8 of the 2006 report is larger than the tally of total violations in C-1 because table C-8 includes low NOx reflash statistics.

This higher percentage of violations bolsters the need for a concessionary approach to reduce emissions from port drayage trucks. It also bolsters the need for more accountability among Licensed Motor Carriers (“LMCs”) for the activities of drivers.

- b. A large amount of future emissions will result from lack of maintenance, control device deterioration, and tampering.**

As pollution control devices and new, cleaner equipment come into greater use, there will be a large amount of emissions associated with lack of maintenance, control device deterioration, and tampering.³ CARB has estimated that as much as 30 percent of future emissions from trucks could stem from these three things. Given this information, proper maintenance and monitoring of the Ports' and States' investment in cleaner trucks and pollution control equipment becomes especially important. Relying on the independent contractor system will hamper the ability of the Ports to effectively ensure that equipment is properly used and maintained. The CTP's requirement that companies employ their drivers ensures that companies are responsible for equipment. Further, a concessionary model approach provides a strong tie between trucking companies and the Ports, which will allow for a more robust monitoring and maintenance program.

c. Fast transition to employee status for drivers is key to LMCs meeting truck replacement target dates.

A fast transition to 100 percent employee drivers is important to stabilize the workforce so that trucking companies can more effectively plan the retrofit and replacement of their fleets in order to meet the fleet modernization requirements. A stumbling block that likely prevents LMCs from retrofitting or replacing their fleet of trucks is the fact that they predominantly use independent owner operators who take their truck with them when they switch "employers." It is our understanding that the American Trucking Association reports that there are consistently high turnover rates of owner operator drivers – over 100 percent annually – and consequently of their fleets.⁴ Anecdotal evidence from our conversations with port drivers at the Ports of Los Angeles and Long Beach supports this statistic from the ATA. With such a high turnover of their fleets, it will be exceptionally difficult for LMCs and the Ports to plan in advance and make the necessary investments in order to meet the timetable for truck replacements required in the CTP.

In contrast, it is our understanding that turnover rates at LMCs hiring drivers as employees are much lower. At some trucking firms, turnover rates reach as low as two to three percent (2-3%). Reducing driver and fleet turnover rates at LMCs will enable port drayage trucking companies to better plan how they will meet the phase in of a clean fleet detailed in the CTP.

Stabilizing LMCs' company fleets, which under the current independent owner operator business model necessitates stabilizing the workforce of drivers, is a necessary step and is critical to the long-term success of the CTP. It is hard to imagine how the trucking companies entering into concession contracts with the Ports will be able to meet the fleet modernization requirements in the CTP until their fleet composition is stabilized so they can figure out which ones will need to be retrofitted or replaced. Because it is imperative that trucking companies are placed in a business environment that will enable them to meet the fleet modernization and air emissions goals, we strongly urge the Ports to require a fast transition to a 100 percent employee driver

³ California Air Resources Board, Draft Proposed State Strategy for California's 2007 State Implementation Plan, at 87 (January 31, 2007).

⁴ See <http://www.truckline.com/NR/exeres/80A87D39-E4C5-46D3-9833-8B45A8C31EC7.htm>.

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workforce. A transition period of six months after commencement of the CTP provides a reasonable timeframe.

Conclusion

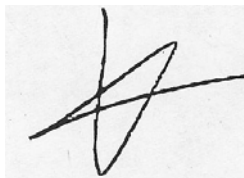
The severe impacts that port trucking has on port-adjacent communities and the region in general requires swift and strong actions by the Ports. The rationales for a strong CTP are readily apparent. While NRDC is fully supportive of statewide regulations, these must not come at the expense of strong and effective local action to curb air pollution. The South Coast Air Basin accounts for approximately 5% of the national population, but has more than 50% of the nationwide population that is exposed to air that exceeds the NAAQS for PM2.5. In addition, the concentration of diesel emissions near the ports and along our trade corridors and the associated health impacts provide evidence of the need for swift and effective actions by the Ports. This is not the time for half-measures and inaction, as many opponents of the CTP have advocated. The Ports must stand firm on their path to a comprehensive solution to the port trucking issues.

We appreciate your consideration of these comments, and we look forward to working with the Ports and other stakeholders to craft a CTP that sufficiently addresses the critical environmental impacts posed by port trucking.

Sincerely,



Adrian Martinez
Project Attorney
Natural Resources Defense Council



Rafael Pizarro
Senior Campaign Associate
Coalition for Clean Air

Cc: (Via Email Only)
Mayor Bob Foster
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