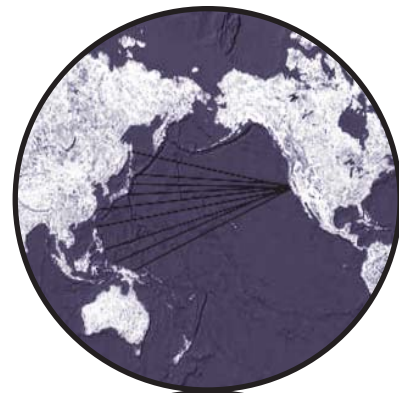


Taking the Low Road

How Independent Contracting at the
Port of Oakland Endangers Public Health,
Truck Drivers, & Economic Growth



East Bay Alliance for a Sustainable Economy

Produced for the Coalition for Clean & Safe Ports

Foreword by Anthony Iton, MD., JD., MPH

Alameda County Public Health Department, Director & Health Officer

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What is EBASE?

The East Bay Alliance for a Sustainable Economy advances economic and social justice by building power and raising standards for working families. EBASE envisions an economy that works for working people. In our vision, all workers—from nurses to teachers to janitors, housekeepers and grocery clerks—earn enough to live in dignity. All work is valued, and all workers enjoy respect and a voice on the job. Prosperity and economic opportunity are broadly shared, and economic growth creates family-supporting jobs. Working families and communities have a voice in the decisions that affect their lives, and the capacity to hold corporate and government decision makers accountable.

We advocate for smart policies that raise workplace standards for low-wage workers. Our successful campaigns, like the Port Living Wage, have improved lives of low-wage working families and empowered residents to organize for economic justice in their communities. This report is part of our contribution to the Coalition for Clean and Safe Ports, of which we are a member.

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Photo courtesy of the Alameda
County Dept. of Public Health

***“Residents living in the shadow of the Port of Oakland can expect to die, on average, more than a decade before residents of the Oakland Hills.*”**

“It is abundantly clear that the current port trucking system is contributing directly to an acute social and public health crisis in the neighborhoods adjacent to the Port as well as among the port truck drivers themselves.”

***-Dr. Anthony Iton,
Director, Alameda
County Public Health
Department***

Foreword

Anthony Iton, MD., JD., MPH

Director and Health Officer

Alameda County Public Health Department

As the fourth largest port in the United States, the Port of Oakland is one of the country’s most vital international trade gateways and constitutes one of the Bay Area’s most important economic engines. By 2020, trade is projected to account for a third of U.S. economic activity, and goods movement will remain critical to this economic sector. Central to goods movement to and from the Port of Oakland is the role of trucking and specifically port truck drivers, as evidenced in this report produced by the East Bay Alliance for a Sustainable Economy.

Residents living in the shadow of the Port of Oakland can expect to die, on average, more than a decade before residents of the Oakland Hills and, appallingly, this gap may be increasing. While inequity in health outcomes is not new, and port trucking practices are not the sole determinant, the long term health of the residents of West Oakland is nevertheless inextricably linked to, and disproportionately dependent upon, the environmental and social policies of their largest industrial neighbor, the Port of Oakland. These residents, predominantly low income African-American and Latino, deserve the same opportunity to live in a healthy environment as residents of the Oakland Hills.

In addition to the chronic health inequities that residents of West Oakland have been forced to contend with for generations, it is abundantly clear that the current port trucking system is contributing directly to an acute social and public health crisis in the neighborhoods adjacent to the Port as well as among the port truck drivers themselves. The activities of the Port bring constant truck traffic, noise, air, and other pollution. Truck, car, bus, tanker, and other vehicular emissions are a major source of outdoor air pollution. Diesel truck emissions directly impact the air quality in West Oakland. Many studies have shown that air pollution can trigger or worsen asthma and emphysema symptoms, and data from local studies support these findings.

West Oakland residents have the highest rates of asthma hospitalization in the county – 2.3 times the Alameda County average. And West Oakland children under five years of age have rates of emergency department visits nearly three

times the county average. Perhaps most telling is the fact that West Oakland residents experience an estimated 359 preventable respiratory illness hospitalizations each year, including an estimated 180 preventable asthma hospitalizations, in excess of county background levels. Additionally, data from the California Health Interview Survey shows that asthma prevalence rates for African Americans in Oakland are substantially higher than for all race/ethnic groups: 41% and 19% for teens and adults respectively.

Two West Oakland elementary schools have asthma rates among 5th graders that are between 1.5 and 2 times the Oakland Unified School District average of 20% and among the highest in the district. Based on the findings of studies among similar communities, the higher burden of asthma in West Oakland and among African Americans can be explained by disproportionately higher exposure to air pollution.

The Port of Oakland has taken the lead on mitigating sources of noxious air pollution attributable to its activities. However, achieving environmental justice in West Oakland will additionally require that the Port, and other local institutions, recognize their affirmative responsibility as neighbors to help the West Oakland community realize its vision for a healthy community. The Port will need to examine the relationship between policies and practices that effectively trap port truck drivers in poverty and contribute, directly and indirectly, to the profoundly inequitable health outcomes in West Oakland.

As a majority “independent contractor” workforce composed primarily of immigrants, port truck drivers are effectively powerless to negotiate their rates with the large corporations that drive the container shipping industry. This powerlessness has resulted in poverty wages, no health benefits, no unemployment insurance, and no worker’s compensation for this vital component of the Port’s operations. In addition to limiting their access to necessary social goods such as high quality education and medical care, housing, childcare, nutritious foods, and safe and cleaner neighborhoods, the port truck drivers’ poverty directly impacts their health and the health of the Port’s neighbors. As independent contractors with limited wages, the port truck drivers often can not afford to acquire newer lower emission trucks. As a result, every day they and the Port-adjacent communities are exposed to hazardous levels of toxic diesel from old and obsolete trucks.

The concession model, as proposed in this report, offers the Port of Oakland the perfect opportunity to help foster an economically vibrant and healthy trucking workforce, improve the health of the neighboring community, and ensure sustained



Photo by Tony George

“Today, so many babies are born in West Oakland with lung problems.

“It’s heartbreaking to see so many kids not able to take a deep breath without choking because they have asthma.

“These kids can only play for a few minutes, and then they have to run inside and use a breathing machine.

“That’s a terrible way to grow up,”

***- Linnie Cobb,
50-year West
Oakland Resident***

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The concession model allows the Port to foster an economically vibrant and healthy trucking workforce, improve the health of the neighboring community, and ensure sustained economic growth that benefits all of Oakland.

economic growth that benefits all of Oakland. By limiting Port access to trucking companies who use clean trucks with employee drivers, the concession model will help end the independent contracting system that is in many ways is central to this acute public health crisis. Full employee status will enable the port truck drivers to negotiate equitable wages that will lift them and their families out of poverty. The use of newer, “green” trucks will significantly contribute to the reduction of diesel toxins currently released into the West Oakland community.

The potential capacity of the concession model for creating positive change extends beyond the Port’s neighbors and truck drivers to Oakland as a whole. Creating a healthy, reliable workforce and reducing community resistance to Port expansion will allow the Port of Oakland to successfully accommodate the projected increase in trade. An efficient and expanding Port means an increase in job opportunities for Oakland’s low skill and skilled workforce, and thus a reduction in the poverty and health inequities currently plaguing the city.

Most importantly, the concession model not only ensures that the benefits of growth are shared more equitably, it shifts the costs from impoverished truck drivers and vulnerable communities to those who profit most from expanding trade – the corporations behind the container shipping industry. However, like all proposals to change business as usual, this plan will be met with resistance. Bold leadership from community advocates, health officials, business leaders, local politicians, and city officials is required to hold the corporations accountable for paying the true cost of shipping. Together we can create a healthier, more sustainable, and economically vital Oakland.

Executive Summary

The Port of Oakland is a \$7 billion economic engine that drives much of the Bay Area economy.¹ But the future growth of that economic engine is in question. Even though container trade is expected to more than double at the Port over the next 20 years, the increasing public cost of moving shipping containers by diesel trucks may thwart the Port's plans to meet projected growth. These costs include pollution-caused respiratory disease in surrounding communities, especially West Oakland, the hazards of trucks using neighborhood streets, as well as dismal economic and working conditions for port truck drivers and their families. With State clean air mandates pending, potential environmental litigation, and drivers protesting conditions through costly work stoppages, the Port of Oakland must find a solution to port trucking problems in order to stay competitive with other West Coast ports.

We undertook this report to better understand the interaction between the working conditions facing drivers at the Port of Oakland and a policy solution to address the harmful effects of port trucking. Studies of truck drivers at other ports, such as Los Angeles and Seattle, reveal shockingly low hourly earnings and harsh working conditions. Do truck drivers at the Port of Oakland face similar challenges? The question is important, because when the public demands accountability of the port trucking industry, many of the stakeholders, from the trucking firms to cargo owners, want to place the burden for reform on the self-employed drivers. Yet, as we found with our field survey of port drivers, they have the least resources and ability to pay for the costs of cleaning up the trucking industry.

At the heart of the current crisis is a dysfunctional, unsustainable port trucking system. Small, undercapitalized port trucking firms are nearly powerless in the current market, and giant shippers like Target and Wal-Mart call the shots. In order to meet shipper demands for lower trucking rates, trucking firms contract with drivers who own their own trucks, known as "independent contractors."

Using independent contractors allows trucking firms to displace the costs of doing business, such as employer taxes, employee benefits, and worker safety nets like unemployment and workers compensation, onto individual drivers and taxpayers. Trucking firms also avoid paying for maintenance facilities, parking facilities and investment into the trucks – all of these responsibilities fall on the independent contractor drivers.



To remain competitive, the Port of Oakland must reduce harmful diesel emissions and solve problems in the trucking industry.

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By not hiring drivers as employees, trucking firms skirt costs for:

- *Buying and maintaining trucks*
- *Employer taxes*
- *Employee benefits*
- *Unemployment insurance*
- *Workers compensation*
- *Maintenance facilities*
- *Parking facilities*

Port drivers shoulder the costs and risks of the port trucking industry, but reap few of the rewards. According to our survey, the average driver takes home \$10.69 an hour after paying for expenses. Fully 25% of drivers make less than \$7.64 an hour, which is just above the State minimum wage of \$7.50 an hour. A majority (56%) made less than the Port's own living wage threshold for 2006 of \$11.58. Nearly all port drivers are immigrant men, striving for the American Dream under harsh working conditions. Most have no health insurance of any kind, no employee benefits and cannot afford to take time off. In the past twenty years, port drivers across the country have demonstrated significant dissatisfaction with their working conditions, through work stoppages, wildcat strikes and attempts to organize. Ironically, as "independent contractors," these workers who desperately want to improve their conditions, are legally barred from negotiating as a group under Federal anti-trust laws. These laws prevent them from even discussing compensation rates with each other.

In recent years, the Port has begun to address port trucking problems with a mix of emission studies, technology improvements and subsidy programs. In addition, recently proposed State air regulations create new mandates for port drivers to reduce their emissions. From the private sector, a group of port transportation firms and shippers have also proposed solutions through a form of self-regulation. All of the aforementioned solutions put the burden of cleaning the air on the drivers themselves. However, our research indicates that such solutions are unlikely to meet their stated goals due to the current independent contracting system used by the port trucking companies.

Our analysis shows that the Port of Oakland can only meet its goals by entering into concession agreements that require port trucking firms to 1) transition independent contractors to directly-hired employee drivers, and 2) invest in clean trucks. The concession agreement model, already being used with Oakland Airport businesses, will create clear accountability for implementing clean air goals, improve community safety and protect driver rights. Most importantly, this solution shifts responsibility off the shoulders of those least able to afford the changes, the drivers and the trucking firms, and onto the large shippers that should be responsible for the costs of moving their goods.

Report Highlights

Port Trucking: A Vital But Unsustainable Industry

International Container Trade and Truck Traffic to Expand

As the fourth busiest container port in the country and one of four major port complexes on the West Coast, the Port of Oakland stands to benefit greatly from expanding global trade. Port drivers haul nearly all containers shipped through the Port to railheads, warehouses and distribution centers region-wide.

- Port of Oakland officials estimate that container volumes will double by 2025.
- Trade through the Port of Oakland's terminals generates \$2 billion in personal income for Bay Area.
- Port of Oakland truck drivers move an estimated \$33 billion in goods each year.
- Port truck traffic is projected to grow from 10,000 trips per day from the year 2000 to 22,000 in 2010.

Port Trucking a Fragmented Sector Dominated by Shippers

An explosion of small trucking firms following deregulation in the 1980s and the growing dominance of the giant retailers in international trade have resulted in depressed shipping rates. Port trucking has become a highly fragmented sector, in which rates are set primarily by international shippers (e.g. Wal-Mart, Target, Costco, etc.).

- Between 1980 and 2005, the number of interstate trucking companies increased from 20,000 to 564,000. From 1980 to 1995, truck driver wages in the U.S. fell by 30%.
- Wal-Mart, the largest importer in the U.S., is nearly 1,000 times larger than the largest port trucking company, Bridge Terminal Transport.
- At the Port of Oakland, 100 local trucking firms provide services through 1,500 local drivers.
- 83% of Port of Oakland drivers in our survey are independent contractors.

Port Trucking Creates a Public Health Crisis for Local Communities

The operation of diesel-powered ships, trucks, trains, and cargo-handling equipment makes the Port of Oakland a major source of air pollution in the region.

- Statewide, diesel emissions result in an estimated 360,000 missed days of work, 2,830 hospital admissions and 2,400 premature deaths each year. More than half of the risk is from trucks.
- One out of every five children in West Oakland has asthma, and the overall asthma hospitalization rate in West Oakland is 2.5 times the Alameda County average.



To reduce harmful diesel emissions, the Port must shift the burden of buying and maintaining clean trucks from those who can least afford it (the drivers) onto the trucking firms and the shippers whose goods are being moved.

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“As an independent contractor, if a driver gets sick or hurt, there’s no paycheck.”

“Oakland doesn’t need poverty independent contractor jobs, but quality jobs with a good paycheck and health benefits.”

“That money could be spent in the community and tax dollars would go back into the City of Oakland.”

*- Yvonne Smith,
60-year resident of
West Oakland*

- Port trucks made 6,300 trips a day into the Port through the West Oakland community in 2003.
- Port trucks emit at least 125 pounds of diesel particulate matter a day directly into residential neighborhoods surrounding the Port.

Independent Contracting Brings High Responsibility, Offers Few Rewards to Drivers

Independent contractor drivers assume the risks, burdens, and costs of port trucking operations, but enjoy few benefits of being “independent businesses.”

- In California, employers avoid up to 30% on labor costs using independent contractors; firms can avoid employment taxes, workers compensation, as well as unemployment and disability insurance.
- Independent truck drivers are responsible for all the costs of doing business, including truck payments, maintenance, insurance, registration, and parking.
- Port drivers do not have the bargaining power to negotiate prices like true independent contractors, instead they are forced to accept low rates set by the trucking companies.
- Because drivers are paid by the load, they are not compensated for the time they spend waiting in long lines at marine terminals, a very frequent occurrence.

Port Drivers & Their Families: Struggling to Make Ends Meet

Our survey of port drivers reveals that only a few prosper under the current system, while the overwhelming majority face difficult working conditions and struggle to earn enough income to provide for their families.

Striving for the American Dream

- The vast majority of drivers work full time (88%), year round (89%), and do not hold second jobs to augment their family income (91%).
- Ninety-three percent (93%) of port drivers were born outside the United States, with the largest group (40%) coming from Southeast Asia.
- Most drivers are married (59%) and two-thirds live in households with one or more children. Survey respondents reported an average of 2.4 children.
- All the drivers we surveyed are men (100%), with an average age of 40.

Meager earnings make supporting a family difficult.

- Port truck drivers took home an average of \$30,490 last year. This is 28% less than the average wage earned by employee truck drivers in Alameda County.
- Port truck drivers on average received \$66,187 last year in gross earnings but after subtracting all their expenses, they took home an average net income of only \$30,490.
- The median driver earnings are \$10.69 an hour. One quarter (25%) make less than \$7.64 an hour.
- Sixty percent (60%) of the port drivers we surveyed earned wages less than the amount needed (\$12.02) to support a family of four above the poverty level in the Bay Area.
- A majority of workers (56%) also earned less than the Port's own living wage threshold of \$11.58.

Lack of health insurance and other benefits puts families in jeopardy and shifts costs to the public.

- We estimate that 2,884 port drivers and family members are uninsured.
- The high number of uninsured drivers and family members creates significant costs to taxpayers for providing health services.
- Nearly two-thirds (62%) of drivers lack health insurance of any kind.
- Over half of the drivers that have children (52%), have no health coverage.
- Thirty percent (30%) of truck drivers reported taking themselves or their family to the emergency room to receive medical care in the last year.
- Only 12% of drivers reported having a pension or retirement plan. This is much lower rate of retirement savings than for all blue-collar workers (52%).

Port drivers experience unhealthy working conditions.

- Port truck drivers work an average of 11 hours per day, compared to only 7.4 hours worked by most transportation and warehouse workers.
- More than one-fifth (22%) of port drivers work 13 or more hours per day
- Port truck drivers have no paid holidays, vacation, or sick leave.
- Almost half of all drivers (45%) reported one or more work-related injuries in the past year.
- Because port drivers are independent contractors, Cal-OSHA has no authority to investigate or enforce workplace safety.
- The concentrated diesel pollution at the Port exposes drivers to long-term risks of such respiratory diseases as lung cancer.



Photo by Randy Loukes

"The majority of port drivers are immigrants.

"We came to America for a better life...but that's not happening.

"Instead we are treated like disposable workers.

"Truckers are just like everyone else. We want good jobs, and a better future for our families."

*-Kulwinder Singh,
Port Truck Driver*

Concession agreements allow the Port to establish a direct relationship with trucking companies through which the Port can require a swift upgrade to clean trucks and end the practice of independent contracting.

Analysis and Recommendations

In the final section of the report, we examine four policy alternatives that have been proposed by major port trucking stakeholders in the Bay Area and in Los Angeles.

- 1) State air-quality regulations that mandate clean trucking standards for the industry, phased in over time;
- 2) Use of public funds to subsidize drivers purchasing cleaner trucks;
- 3) Industry self-regulation and generation of private revenue to invest in clean trucks;
- 4) Requirement of concession agreements between the Port of Oakland and port trucking companies that set minimum environmental and labor standards.

While all of the proposed strategies hold at least some potential to reduce the environmental impacts of the port trucking industry, only the concession agreement model can address the industry's structural problems. Concession agreements allow the Port to establish a direct relationship with trucking companies through which the Port can require a swift upgrade to clean trucks and end the practice of independent contracting. It is also the only alternative that concretely improves economic conditions for drivers.

Based on a concession agreement model recently proposed by the Port of Los Angeles and Port of Long Beach, we recommend the following policy:

- The Port should require that all port trucking firms that access the marine terminals enter into concession agreements.
- The concession agreements should incorporate environmental, community, and labor standards and require trucking companies to:
 - Meet clean truck standards on an accelerated schedule to reduce emissions and the health impacts of port trucking.
 - Use the cleanest available trucks and technology available.
 - Provide off-street parking for their trucks outside of residential neighborhoods in order to minimize their public health impacts.
 - Meet local hiring standards to increase access to trucking jobs for people in communities affected by Port operations, like West Oakland.
 - Hire employees rather than using independent contractors. The agreement should not prevent drivers from continuing to own their own vehicles.
 - Guarantee "labor peace," to prevent future labor disruptions.
 - Provide technical support and prioritize incentives to small, local trucking companies to ensure that they can succeed economically while meeting all environmental, labor, and community standards.
- The Port should establish a Port Trucking Social Justice Committee, modeled on the MAPLA Social Justice Committee, composed of all stakeholders (including, but not limited to, trucking companies, community organizations, environmental organizations, Port staff, labor unions, workforce development organizations) to monitor and oversee all aspects of this policy.

Introduction

The Port of Oakland represents one of the largest economic engines in the Bay Area, but also one of the most vulnerable to disruption. In April 2004, port truck drivers stopped transporting cargo between the Port of Oakland and warehouses, rail yards and distribution centers throughout California. The port truckers halted work to protest high diesel prices and low pay. As a result, NUMMI, California's largest auto assembly plant, was almost forced to stop production and Blue Diamond, the world's largest almond processor, based in California's Central Valley, lost over \$2.5 million dollars a day.² The important role that these drivers play in the regional economy was cast suddenly into sharp relief, as were their dismal working conditions.

Spontaneous work stoppages and disruptions by port truck drivers are not the Port of Oakland's only vulnerability. The Port faces staunch opposition from community and environmental groups, a consequence of decades of diesel pollution and truck parking spilling into surrounding residential neighborhoods, especially West Oakland. And, across the State, public officials are finally acknowledging the environmental harm caused by ports and port trucking. The State's Air Resources Board, after their 2006 Goods Movement Emissions Reduction Plan estimated that pollution from goods movement causes 2,400 premature deaths a year and costs \$19 billion in health impacts, recently proposed new regulations requiring port trucks to meet tough emissions standards. In Los Angeles, a Natural Resources Defense Council (NRDC) lawsuit halted construction on a nearly completed marine terminal, resulting in a comprehensive settlement with the Ports of LA and Long Beach to dramatically reduce emissions.

The lesson of Los Angeles has clear implications for the Port of Oakland. If the Port does not solve its pollution problems, predicted growth in trade cannot be accommodated and the Port will become uncompetitive compared to other West Coast ports. The Port has recently released a Seaport Air Emissions Inventory and is convening a stakeholder planning process to address air pollution. Port action is urgently needed, as nearby communities face a devastating public health crisis, with skyrocketing asthma and respiratory disease. With public outcry growing, Port pollution threatens one of our region's most important connections to the global economy.

So, what does labor unrest among port truck drivers and the Port's pollution problems have in common? Both result from the relationship between trucking firms and the drivers that haul the huge volume of containers moving through the Port every year. The vast majority of port truck drivers are not employees of trucking companies, but contracted workers who often own their trucks. Both the giant shippers, like Wal-Mart and Target, and the trucking companies, called motor carriers, have found that using independent contractors is a cheaper way to move containers.



Stock Photo

Because of decades of pollution, the Port faces community opposition and new State regulations on emissions.

Without systematic fixes to address environmental concerns, the Port will not be able to grow and remain competitive.

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“The pollution is so thick that I can wash my car today, and within 48 hours, it is black with soot again.

“Within six months of moving to West Oakland, my husband developed asthma.

“I think about the truckers who breathe the fumes all day long and wonder what kind of health consequences they must suffer on the job.”

*- Cherice Carter,
West Oakland
Resident*

Under this system earnings are so low that drivers can barely afford to make ends meet and cannot afford to upgrade to cleaner trucks. As one industry observer noted, “port trucking is a badly paid, precarious line of work, pursued only by the economically desperate.”³

We undertook this report to better understand the working conditions facing drivers, what could be done to improve them and the implications for mitigating the other harmful impacts of port trucking. While the environmental damage resulting from Port of Oakland activities has been studied, the outcomes for port truck drivers have not. Studies of truck drivers at other ports, such as Los Angeles and Seattle, reveal shockingly low hourly earnings and harsh working conditions. Do truck drivers at the Port of Oakland face similar challenges? What can the Port do to address the persistent dissatisfaction expressed by drivers? These questions are important, because many recent proposals to solve the industry’s pollution problems put the burden of cleaning the air on the drivers themselves, exacerbating their economic challenges.

In Section 1, we describe the market structure of port trucking and how it has led to environmental damage, public safety problems for local communities, broken promises of prosperity for truckers and loss of operational control for ports. Understanding how these outcomes are inter-related is critical in crafting a policy solution for the Port of Oakland.

In Section 2, we paint a picture of port drivers, their working conditions and the economic hardships faced by their families. The analysis is based on a survey of 202 drivers conducted by EBASE in February and March of 2007.

In Section 3, we assess the viability of four recently proposed solutions to the public costs of port trucking. We measure the proposed solutions with five criteria, based on the analyses in Sections 1 and 2. All five criteria are critical to a successful policy solution that allows for future expansion of the Port of Oakland. Finally, we provide recommendations that ensure the costs of fixing the industry’s problems are born by those who profit the most from its activities.

NOTE: This report focuses on the environmental and economic outcomes of the port trucking industry structure – in particular, the use of independent contractors. Throughout this report, we use the terms “port truck driver” and “port driver” to primarily refer to the local, independent contractor drivers, who comprise the majority of the workforce. When we use this term to refer to all drivers, both independent contractors and employees, we note this for the reader.

Section 1:

Port Trucking

A Vital but Unsustainable Industry

While unfamiliar to most people, port truck drivers have a considerable impact on our daily lives and livelihood. These workers constitute a critical link in the global supply chain that brings retail goods from our seaports to local stores and takes U.S. exports to outbound ships. Furthermore, this link is growing in importance as trade increases and goods movement becomes a larger sector of our economy. Unfortunately, this little-known workforce of port truck drivers perform their services in an unsustainable, fragmented industry that is powerless within a global supply chain dominated by giant corporations. This has resulted in severe consequences for the environment, local port communities, and the drivers themselves.⁴

Port Trucking: A Vital & Growing Sector of the Economy

The vast majority of goods imported to and exported from the U.S. are shipped in “intermodal” containers, which are typically 40 foot-long metal shells that can be moved easily by boat, rail or truck. Most intermodal containers start their journeys at a foreign factory, where they are filled with goods that have been manufactured for U.S. markets. The containers are then loaded onto very large, specialized ships, with thousands of other containers, and transported across the ocean. When the containers arrive in a U.S. port they are either loaded directly onto a rail car or picked up by port truck drivers and delivered to inland destinations, such as warehouses, factories and distribution centers. At some point in their journey from the factory to our doorstep, the clothes, furniture and electronic goods in our homes likely caught a ride with a port truck driver.

The importance of port trucking to the U.S. economy is growing as international trade expands rapidly. As measured by Gross Domestic Product (GDP), twenty-five percent (25%) of the U.S. economy is related to the import and export of goods. In addition, trade is expected to account for a third of all U.S. economic activity by 2020.⁵ The expanding role of trade in the economy relies entirely on the ability to move goods from points of entry, such as seaports and airports, to their final destinations. Containerized trade alone is estimated to quadruple in the next 20 years, requiring even more transport of goods by port truck drivers.⁶

The Port of Oakland plays a vital role as an economic engine for the Bay Area and greater Northern California region. As the fourth busiest container port in the country, the Port of Oakland serves as an international trade gateway for both California and the United States.⁷ In 2005, trade through the Port’s ten marine terminals generated \$2 billion in personal income, \$208 million in state and taxes and supported more than 28,000 jobs in the region.⁸ Port drivers play a critical role in the regional economy by transporting goods that are



In 2005, Port marine trade generated \$2 billion in personal income, \$208 million in state and taxes and supported more than 28,000 jobs in the region.

Port drivers play a critical role in that trade as 90% of all goods are moved inland via truck.

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used in every industry. They pick up imported goods from the marine terminals and transport them to inland locations. Ninety percent of all goods arriving at the Port are moved inland via truck.⁹ Commonly imported goods include automobile parts, electronics, beverages, and furniture. Port drivers further facilitate trade by moving regional commodities such as almonds, grapes, and lettuce from the Central Valley to Oakland for export.¹⁰ As with imports, the vast majority of agricultural goods exported through the Port are shipped by port drivers.¹¹ In total, we estimate that port truck drivers move \$33 billion in goods to and from Oakland's port each year.¹²

As with national container trade, maritime activity at the Port of Oakland will continue to grow. Port officials estimate that container volumes will increase from 2.4 million TEUs in 2007 to between 4 – 6 million TEUs by 2025.¹³ A TEU (twenty-foot equivalent unit) is the unit of measurement in container shipping. Most containers today are 40-foot containers; one 40-foot container is equivalent to two TEUs. The Port of Oakland is also in the midst of a truck traffic boom, projecting growth from 10,000 truck trips per day in 2000 to 22,000 trips per day in 2010.¹⁴

Who Plays a Role in Port Shipping?

Shippers: Companies that pay to have their goods sent from one location to another. The largest shippers in the U.S. are Wal-Mart, Target, and Home Depot, retailers that import enormous amounts of goods from Asia.^{22a}

Steamship Lines: Also known as “ocean carriers,” these companies own and operate the large container ships that move the goods across the ocean. All the major steamship lines are non-US companies, including APM Maersk (Denmark), Hanjin (Korea), Hapag-Lloyd (Germany), and China Shipping and OOCL (China).

Port Authorities: Ports in the U.S. are usually run by public entities that own and administer the waterfront areas where ships dock. They generally act as landlords, leasing land to marine terminal operators. The Port of Oakland oversees over 900 acres of maritime terminal facilities, the Oakland Airport, and waterfront commercial real-estate in its capacity as an independent department of the City of Oakland.

Marine Terminal Operators: (MTOs) own and operate the equipment on the docks that move containers from the ships onto trucks or rail cars. Most MTOs are subsidiary businesses of the major steamship lines.

Licensed Motor Carriers: (LMCs) are trucking firms that have obtained a license from Federal and State agencies to move goods over roads. In the case of port trucking, they are contracted by shippers or steamship lines to move containers to and from the marine terminals.

Port Truck Drivers: Drivers are contracted by LMCs to pick up imported goods from marine terminals and transport them to warehouses, distribution centers, and rail yards. They further facilitate trade by moving commodities to ports for export. The vast majority of port drivers are independent contractors who own their truck.

Railroads: Railroads often operate rail facilities near marine terminals to move containers across the country.

Structural Changes in Freight Transportation Result in Growing Market Power of Shippers

Over the last few decades, two economy-wide forces have had a profound effect on port trucking: trucking deregulation and the growing bargaining power of giant U.S. retailers. In 1980, Congress began to deregulate the trucking industry, removing rate controls and minimum standards for new firms entering the market. Existing trucking firms with hundreds of trucks, union employees, and terminal facilities, faced new competition from firms that could start up without trucks, employees or terminals.¹⁵ New firms gained this easy entry to the market by contracting with non-employee drivers that owned their own vehicles, rather than buying trucks or hiring drivers as employees. This practice quickly and dramatically drove down the rates for trucking services and resulted in an explosion of new motor carriers.¹⁶ The American Trucking Association (ATA) estimated that between 1980 and 2005, the number of interstate trucking companies increased from 20,000 to 564,000.¹⁷ One measure of trucking rates, driver wages, plummeted 30% by 1995.¹⁸

For port trucking specifically, the end result has been a highly fragmented industry with extremely low barriers to entry. Thousands of mostly small to medium-sized trucking companies contract with an estimated 110,000 independent, port drivers nationwide.¹⁹ A study of port trucking companies at the nation's largest port complex, the Ports of Los Angeles and Long Beach, found that 70% of the motor carriers surveyed are small firms, contracting with fewer than 25 independent drivers.²⁰ At the Port of Oakland, it is estimated that over one hundred trucking firms provide services through 1,500 – 2,000 drivers.²¹ Most of these firms do not own their trucks, do not have truck yards and do not have maintenance facilities. The majority of the capital investment is not made by the trucking firms, but by the drivers themselves.

The rise of giant retailers in the U.S. has also had a dramatic effect on port trucking. Historically, both importer and exporter shippers, were numerous compared to the few large transporters that moved their goods, including steamship lines, terminal operators, the major trucking firms and railroads (see page 16 for a description of who plays a role in port shipping). As manufacturing of U.S. consumer goods moved overseas, the role of large retailers in trans-oceanic shipping greatly increased. And as large retailers, such as Wal-Mart, Target and Home Depot, acquired more market share in consumer goods, their power relative to the transportation providers has grown. Even the largest of the ocean shipping lines, APM Maersk, is dwarfed by Wal-Mart.^{22b} Table 1 compares the revenues of some of the largest retailers to the revenues of the largest trucking firms operating at the ports. In fact, Wal-Mart is nearly 1000 times larger than one of the largest port trucking companies, Bridge Terminal Transport (BTI).²³



As giant retailers like Wal-Mart, Target, and Home Depot have acquired greater market share in consumer goods, they have used their extraordinary market power to demand and receive lower prices from trucking firms to move their goods.

Most Port trucking companies do not own trucks, do not have truck yards or parking, and do not have maintenance facilities.

The majority of business investment is made by the truck drivers.

Table 1

Retailers	Revenue (Billions)	Port Trucking Firms	Revenue (Billions)
Wal-Mart	\$312.1	JB Hunt Intermodal	\$1.3
Target	\$81.5	Pacer International	\$1.1
Costco Wholesale	\$53.0	Bridge Terminal Transport	\$0.3

***Reflects 2005 revenue figures**

Using their extraordinary market power, shippers have demanded and received ever lower transportation costs. One industry expert observed that rates for port trucking have remained flat for 15 years.²⁴ In theory, drivers who are self-employed, independent contractors have the ability to negotiate prices paid by motor carriers. In turn, the motor carriers pass on these prices to the shippers. In reality, the large, powerful shippers set the prices for the entire industry and both the motor carriers and the truck drivers are, in the language of economists, price takers. As a Seattle port official stated, "It used to be that the steamship line held the controlling hand in ocean trade ... Today, the shipper often calls the shots."²⁵

With the use of independent contracting and overwhelming market power, the giant retailers currently pay shipping rates below those which would allow motor carriers and truck drivers to operate responsibly. As we discuss in the following section, the result has been a massive shift in the costs for moving goods from the shippers to the public, especially to the local communities that neighbor US ports, as well as the port drivers themselves.²⁶ The irony is that obligations for responsible trucking at our ports have been shifted from the largest, most profitable companies in the world to the some of the smallest, least profitable local businesses.

Port Trucking Shifts Costs of Doing Business to the Public, Surrounding Communities, and Drivers

Growing container trade combined with an increasingly fragmented and powerless trucking industry has led to growing crises for ports across the country. First and foremost, port trucking has become one of the egregious sources of pollution in urban areas with ports, creating public health crises for local communities. Second, the pollution problem is exacerbated in surrounding communities, like West Oakland, where port trucks use local streets for alternative routes and parking. Third, under the independent contractor model, drivers take on all the risks and responsibilities of port trucking, but reap few of the rewards. Finally, local port officials lack a mechanism to change these conditions as they currently have no formal relationship with the port trucking companies and the thousands of drivers that enter and leave their jurisdiction.

Diesel Pollution and the Public Health Crisis

The operation of diesel-powered ships, trucks, trains, and cargo-handling equipment makes the Port of Oakland a major source of air pollution in the region. Port activities, including port trucking, are contributing to a growing public health crisis in communities surrounding the Port.

Diesel exhaust from freight transport creates significant public health costs for Californians.²⁷ Statewide, these diesel emissions result in an estimated 2,830 hospital admissions, 360,000 missed days of work, 1.1 million missed days of school, and 2,400 premature deaths each year. More than half of the risk is from truck emissions.²⁸ These health impacts cost Californians \$19 billion.²⁹

Of all the Port's pollution sources, port trucks operate nearest to surrounding neighborhoods and local residents. A recent study found port trucks made 6,300 trips a day through the West Oakland community.³⁰ Truck activity in the community emits at least 125 pounds of diesel particulate matter per day, exposing residents in West Oakland to seven times the exhaust per person as residents in Alameda County.³¹ The public health impacts of port trucking for West Oakland are severe. One out of five children in West Oakland has asthma,³² and the overall asthma hospitalization rate in West Oakland is 2.5 times the Alameda County average.³³

Trucks in Residential Neighborhoods Harm Community Health

The proximity of the Port to the West Oakland community alone exposes residents to higher levels of diesel pollution than any other community. Use of local streets by port trucks makes exposure to emissions even greater and more direct.

Because most trucking firms lack parking and service facilities, port drivers often park overnight on neighborhood streets and use them as routes to off-site maintenance, fuel and food services.³⁴ A study of truck traffic in West Oakland showed that hundreds of trucks used local streets a day, many of them illegally.³⁵ Trucks driving through residential areas emit pollution directly into homes, schools and community facilities, increasing risks to residents and especially children. In addition, driving and overnight parking on residential streets increases residents' exposure to toxic air pollutants because trucks emit more pollutants at slow speeds.³⁶ Residents in West Oakland describe how black soot builds up on their window sills and blinds.³⁷

Both the City of Oakland and Port have made efforts to address local truck traffic in West Oakland, but their ability to enforce the solutions is limited. After the West Oakland Environmental Indicators Project reported the damaging effects of truck traffic and diesel emissions on their community, the City adopted a new truck routing ordinance in 2005 to remove heavy trucks from residential streets. Although signs were installed to direct trucks to the new routes, the only enforcement mechanism available is local police monitoring. Neither the City nor the Port of Oakland has the authority to hold trucking firms responsible for the actions of drivers. Heavy-duty truck traffic on neighborhood streets remains a significant problem.³⁸



“Trucks parking and driving down West Oakland streets is extremely common.

“It’s no wonder one in five West Oakland children have asthma.

“I want to see my grandkids and other youth have an unpolluted place to live where being neighbors to the Port means economic opportunity, not just toxic diesel.”

*- Shirley Burnell,
40-year resident of
West Oakland*

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Photo by Ori Korin

Illegal truck traffic and overnight parking in the West Oakland community remains a significant problem.

Neither the City of Oakland nor the Port has the authority to hold trucking firms responsible for the drivers who move goods for them.

The Port and the City are required to provide 15 acres of truck parking each on their respective portions of the former West Oakland Army Base. This requirement was imposed by the Bay Area Conservation Development Commission as part of environmental mitigations for redevelopment of the Army Base. Both the City and the Port have temporary facilities and are planning permanent facilities at the Army Base. However, simply having parking facilities does not ensure that drivers will use them. The Port charges drivers at least \$1,000 a year to park overnight in its facility, a cost that is difficult for them to absorb. Moreover, drivers who pay for parking are put at a competitive disadvantage to drivers who park for free on residential streets. Overnight truck parking remains a significant problem in West Oakland.³⁹

In addition to diesel emissions, heavy-duty truck traffic on streets intended for passenger cars also increases the risk of collision with other vehicles and pedestrians. Truck traffic results in increased levels of noise and a reduction in the overall livability of the neighborhood. All these adverse impacts lower residents' quality of life and discourage them from going outdoors, taking walks, and visiting local parks and community centers.⁴⁰

The Myth of Independence: Many Risks, But Few Rewards

Around the country, port drivers have demonstrated significant dissatisfaction with working conditions, through work stoppages, wildcat strikes and attempts to organize. Locally, several significant labor disruptions by port drivers over the last ten years reveal a deeply unsatisfied workforce.⁴¹ At the core of their complaints have been poor earnings and sense of powerlessness, both related to their independent contractor status.⁴²

In the long chain of business relationships required to move containers, local port truck drivers are left holding all of the risks of operating port trucks, but receive few of the rewards. Although some argue that the autonomy of being independent contractors compensates for difficult working conditions, close examination of port trucking reveals that drivers enjoy very limited independence.

The vast majority of port drivers are self-employed, independent contractors whose work is governed by a contractual rather than an employment relationship. In our survey (described in detail in Section II), 83% of local Port of Oakland drivers reported being hired as independent contractors, while only 17% indicated being employees.⁴³ Surveys at the Ports of LA/Long Beach and the Port of Seattle found similar results with 79% and 71% of drivers reporting independent contractor status respectively.⁴⁴ (For the purpose of this report, when we use the term "port drivers," we refer to those who are independent contractors.)

As independent contractors, most port drivers take home earnings only after all the expenses of operating their trucks are paid. This includes fuel, insurance, truck payments and other costs (see Section 2 for a detail of these costs and our estimates of earnings from the port truck driver survey). Survey reports of truck drivers from other ports on the west coast, including Seattle, Los Angeles and Long

Beach, show that independent contractor drivers make surprisingly low earnings, estimated from \$29,500 to \$32,500.⁴⁵ Factoring in their long hours, hourly earnings are estimated at \$10.85 to \$11.86.⁴⁶

As independent contractors, port drivers receive neither mandatory employee benefits nor optional benefits. Drivers are excluded from mandatory benefits such as unemployment insurance, workers compensation, disability insurance, and paid family leave, leaving them unable to rely on the basic safety net guaranteed to employees. Furthermore, they are also excluded from the protections of minimum wage and worker safety laws. For example, Cal-OSHA has no authority to investigate or enforce workplace safety for independent contractors, even in the case of workplace death. In addition, drivers are denied optional employee benefits, such as health insurance, retirement benefits, sick leave, and vacation. Drivers must pay for medical, dental and vision insurance or services entirely out of their own pockets. Anytime that drivers spend away from work caring for themselves or a family, or taking a vacation, is unpaid.

By not owning the trucks that provide the core function of their business, motor carriers (and the shippers that use them) shift all the risks and responsibility for truck operations to the drivers. For example, like any business, port drivers expect a return on capital investments - in this case, their trucks. Our survey found that drivers spend half (50%) of their time waiting in line at the marine terminals to pick up containers.⁴⁷ Because drivers are paid per trip and not paid an hourly wage, time waiting in line is unpaid. This represents a considerable loss of profit on capital investment that the motor carriers and the shippers do not have to bear. Also, trucking companies pass along all the responsibility of operating a trucking fleet to the drivers including maintenance, accidents, chassis problems, insurance and registration.

Moreover, port drivers are barred from taking collective action to improve their working conditions and compensation. As independent “businesses,” the Federal Sherman Antitrust Act, intended to prevent monopolization of markets by giant corporations, prohibits port drivers from talking to each other about driver compensation and benefits.⁴⁸ Although a seemingly absurd application of a Federal law, designed to curb the power of the largest corporations, port authorities and shippers have sued or threatened to sue drivers when they have attempted to take collective action.⁴⁹

Despite the many risks and few rewards of port trucking, some industry participants argue that being independent agents compensates port drivers for their difficult working conditions. Theoretically, as self-employed individuals operating their own business, they have freedoms in their work that employees do not have. However, under closer examination, it appears that port drivers do not enjoy many of these freedoms. In fact, their classification as independent contractors benefits primarily the motor carriers, and, in turn, the shippers.



As independent “businesses,” Federal laws intended to prevent monopolization of markets by giant corporations prohibit drivers from negotiating as a group for higher rates, health care, and better working conditions.

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Drivers get the worst of both worlds.

As independent contractors, they bear all of the risks, such as failing to make a return on their investment, but reap few of the rewards, such as setting their own rates and schedules.

There is considerable evidence that many employers in the U.S. deliberately misclassify workers as independent contractors as a way to save on payroll costs and other benefits at the expense of workers (see SIDEBAR). Many argue this is true for port trucking companies, and this in turn benefits the giant retailers.⁵⁰ One, independent, legal assessment of the port trucking sector concluded that California State code supports classification of drivers as employees (although that interpretation is not shared by all government agencies and the courts who must decide specific cases).⁵¹ At the core of this interpretation is the idea that workers performing services that are integral to a business should be classified as employees.⁵² Examples of integral services are cashiers working for a retail store, flight attendants working for an airline, and crane operators working for a marine terminal. The fact that truck driving is integral to the business of motor carriers calls into question whether drivers can be truly “independent.”

It is beyond the scope of this report to fully examine the legal question of classification. However, for the purposes of understanding the working conditions that so-called self-employed drivers face, we explore below the degree of independence experienced by port drivers and the consequences of the relationship for the drivers. Table 2 compares the theoretical benefits of being an independent contractor to the reality for port drivers.

Research by Federal and state agencies indicates that employers frequently misclassify workers, such as truck drivers, as independent contractors. A recent U.S. Government Accountability Office report stated that employers have considerable cost incentives to do this.⁵³ Use of independent contractors by an employer can save up to 30% of total payroll costs, in the form of Federal payroll tax (FICA), State unemployment insurance, State disability insurance and workers compensation insurance.⁵⁴ In California, random audits by the State’s Employment Development Department revealed that 29% of businesses had misclassified employees.⁵⁵ Of all industries in California, the transportation and utilities sector had the highest rate of misclassified employees (5.6%) compared to the average (2.3%).⁵⁶

Based on the below comparison, port drivers appear to get the worst of both worlds. On the one hand, they bear all of the risks of being independent contractors, such as failing to make a return on their capital investments, but reap few of the rewards, such as setting their own rates and schedules. The only factor they appear to control is how many hours they work – but at the low wages drivers make, it is not clear that working part-time is an option. For most drivers their independent contractor status appears to primarily benefit the motor carriers at the drivers’ expense. Yet, even the motor carriers are powerless to improve conditions for port drivers, as they must accept the rates they receive from shippers to remain competitive.

Table 2

Benefit of Independence	Reality for Port Drivers
Control over schedule and sequence of tasks	Half of the surveyed drivers (50%) reported experiencing strict deadlines for the pick-up and drop-off of containers. And close to half (49%) of the truck drivers reported receiving a list of tasks to be completed from the motor carrier at the beginning of the day. Also, the low rates paid per trip mean that the majority of them must make as many trips as possible in one day just to meet their costs and support their families. ⁵⁷
Ability to organize own work and exercise discretion	There is very little room for discretion in picking up and delivering containers. Typically, there is only one direct route to a given location and drivers are often forced to wait hours in line to pick up containers.
Ability to pass on costs of doing business, such as increased fuel costs and paying for health insurance and other benefits.	Industry sources describe that while motor carriers sometimes charge shippers a fuel surcharge to account for high fuel costs, it is often not fully passed on to drivers. ⁵⁸ Also, as described later in this report, few port drivers can afford health insurance and most have no retirement benefits.
Ability to set prices.	The large ratio of drivers to motor carriers weakens drivers’ bargaining power. Most motor carriers offer a non-negotiable flat rate for various destinations. The Economist, an international business magazine, described port drivers as “price-takers, not price-setters” who “consequently have little bargaining power” in setting the terms of their work. ⁵⁹
Authority to negotiate directly with shippers	Port drivers are licensed to drive heavy trucks, but can only operate under a trucking firm’s Federal Department of Transportation (DOT) operating authority. A Port driver cannot bypass the motor carriers to negotiate with a shipper without obtaining his or her own DOT operating authority.

Unlike other industries that operate on its property, the Port has no direct relationship with trucking firms.

This makes implementation and oversight of even the simplest policies to improve the industry extremely difficult.

Port Presently Lacks Means to Hold Trucking Industry Accountable

While the Port has direct relationships with every other business that operates on its property, the Port has no direct relationship with the port trucking industry. This poses a serious problem for the Port, potentially leading to future operational disruptions and jeopardizing future Port expansion.

The Port of Oakland is responsible for ensuring clean, safe, and efficient operations of the maritime facilities. The Port is accountable for its activity not only to surrounding communities, but to other government agencies, including the Department of Homeland Security, the California Air Resources Board, and the Bay Area Air Quality Management District. In the near future, the Port will be responsible for ensuring that the Transportation Worker Identification Credential is successfully implemented without major disruptions. In addition, the Port is responsible for mitigating the environmental impacts of current operations and future growth.

For most other business entities on its property, the Port uses contractual agreements, such as leases, right-of-entry agreements, concession agreements, and others to achieve its goals. These goals include coordination of hundreds of business operations, security, paying for Port administration, generating revenue for capital improvements and implementing policy objectives, such as greening the Port and living wages. For example, the Port has concession or right-of-entry agreements with firms that move people on and off the airport, including rental car firms, shuttle buses, limousine services and taxi cabs.

However, port trucking is an exception to this practice. Due in part to the fragmented structure of port trucking, the Port currently has no formal agreements with any of the estimated 100 motor carriers or estimated 1,500 to 2,000 drivers. Not only does the Port lack direct knowledge of port trucking firms and drivers, but constant turnover of drivers ensures a constantly changing set of independent entities.⁶⁰ This makes implementation and oversight of even the simplest policy objectives for port trucking extremely difficult.

For example, Port of Oakland officials have acknowledged the problem of diesel pollution from port trucking and are attempting to address it through several initiatives.⁶¹ However, the Port's primary program for cleaning up port trucks, the Truck Replacement Program, has only resulted in 70 trucks being replaced since 1999.⁶² This is a small fraction of the estimated 1,500 trucks that regularly visit the Port. In their Clean Air Action Plan, the Ports of LA and Long Beach described reducing emissions from port trucks as "an extraordinary challenge because it involves thousands of truck owner/operators who do not have the financial resources to acquire cleaner trucks on their own."⁶³

Section 2

Port Drivers & Their Families

Struggling to Make Ends Meet

While much is known about the harmful effects of diesel pollution from port trucking, to date little has been known about the truck drivers at the Port of Oakland. Our survey of port drivers reveals that only few prosper under the current system, while the overwhelming majority face difficult working conditions and struggle to earn enough income to provide for their families.

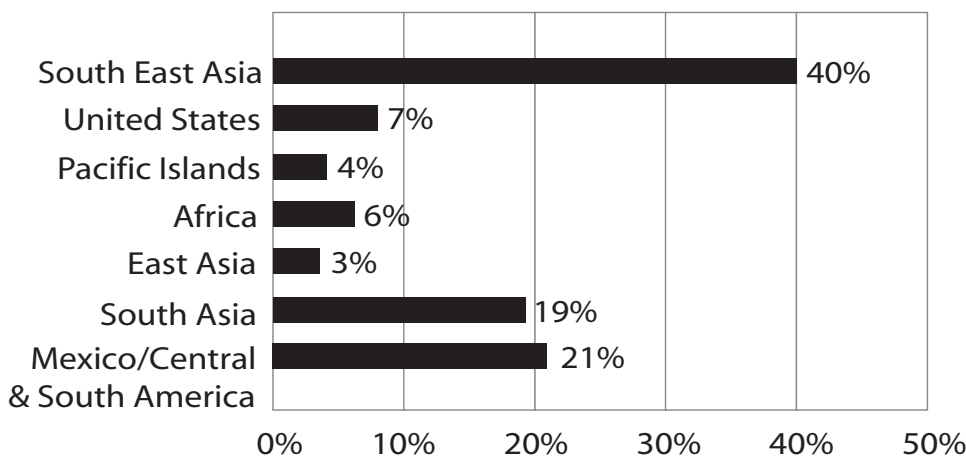
Brief Notes on the Survey

We conducted the survey of port drivers in the morning, before the gates opened at nine of the 10 marine terminals. Response rates were high for this type of survey – 63%. Our total survey consisted of 202 drivers. Fifty-three (53) of those surveyed drove trucks cross-country and were excluded from the analysis. We also excluded 26 employee respondents, in order to focus entirely on the conditions of contracted drivers. Our final sample of independent contractor drivers was 123. We estimate that this represents about 8% of the estimated 1,500 local port drivers. For more on our survey methods, see Appendix A, Survey Methodology. In the rest of this section, we use the term “port truck driver” or “port driver” to refer to independent contractors.

Who are Port Truck Drivers?

Truck drivers at the Port of Oakland comprise a blue-collar, primarily immigrant, workforce from all over the world. Port drivers work extremely long hours, year-round to support their families. Ninety-three percent (93%) of port drivers were born outside the United States, with the largest group (40%) coming from Southeast Asia (see Figure 1). The top three countries of origin indicated in our survey were Vietnam, India, and Mexico.

Figure 1: Region/Country of Origin



Few drivers prosper under the current system, while the overwhelming majority face difficult working conditions and struggle to earn enough income to provide for their families.

On average, truck expenses for drivers surveyed were \$36,117, eating into their income by 54%.

At the end of last year, port truck drivers took home an average net income of \$30,490.

Port drivers are “breadwinners” for their families. Most are married (59%) and two-thirds live in households raising one or more children. Survey respondents reported an average of 2.4 children. All drivers we surveyed are men (100%), with an average age of 40. For nine out of ten port drivers, hauling cargo is their only job, making this income central to their families’ well-being.

The average driver serving the Port of Oakland works 11 hours per day and almost one in four drivers (22%) report working thirteen or more hours in a typical day. Furthermore, for 80% of the drivers, truck driving is a year-round job. These combined figures indicate that drivers spend many hours away from their spouses and children, in order to provide for their families.

Port truck drivers have less formal education than other transportation workers, which is consistent with a population that is primarily foreign born. The majority of drivers are high-school educated (54%), while the vast majority (80%) of all transportation and materials handling workers in the U.S. are the same.⁶⁴ Port driver education attainment is more similar to agricultural workers, of whom 55% are high school educated.⁶⁵

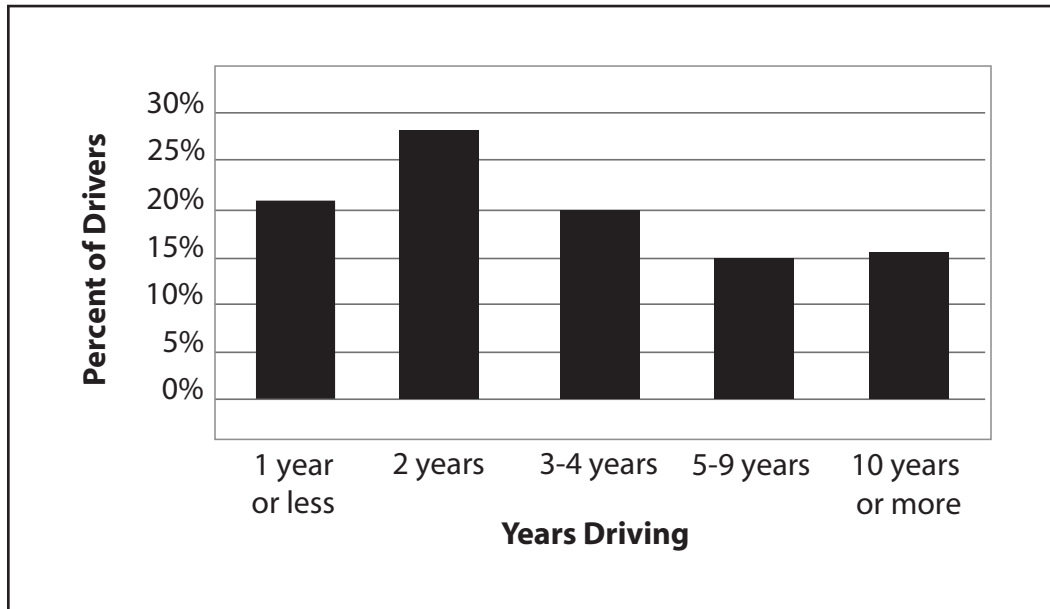
While port drivers travel throughout California delivering their cargo, Table 3 shows that over three-quarters of drivers (79%) live in the Bay Area, with close to half (43%) living in the East Bay. Almost a fifth of them (19%) reported living in the South Bay and another fifth (21%) reported living in the Central Valley.

Table 3: Where Do Drivers Live?

Bay Area	79%
East Bay	43%
Peninsula	10%
South Bay	19%
North Bay	8%
Central Valley	21%

Most drivers are fairly new to port trucking, although there are also many who have attempted to make a career of port trucking. Twenty-one percent of drivers report working in port trucking for a year or less, and 59% report driving for three years or less (see Figure 2). On the other hand, a significant group of drivers (29%) have worked in port trucking for five or more years and 16 percent have worked for ten years or more. However, we believe that these figures likely underestimate actual driver turnover as they do not include drivers moving between companies. One of the largest port trucking companies in the country, Roadlink USA, asserted that driver turnover in the industry was 135% and that the number one industry issue is driver dissatisfaction and aggravation.⁶⁶

Figure 2: Years Driving At the Port of Oakland



“Drivers’ wages are very low, and most of our money gets spent keeping our trucks running.

“It’s common to spend four hours waiting in line to pick up a container. It’s bad for me because I am not paid for that time.

“But it’s also bad because the trucks are polluting the air, which is bad for the drivers as well as families living near the Port.”

**-Dawit Ahferombre,
Port Truck Driver**

Port Truck Drivers Earn Considerably Less than Other Drivers

As independent contractors, port truck drivers are responsible for all the costs of operating their trucks. Thus, a driver’s take-home income is not the amount he or she is paid by the motor carrier, but the amount left at the end of the day after all truck expenses have been paid. Truck expenses include:

- Insurance
- Annual registration and other permits
- Fuel
- Maintenance & repairs
- Communications (radios and/or cell phones)
- Payments for truck loan
- Parking
- Damages to chassis (which they don’t own)
- Tolls, traffic tickets and other expenses

Port truck drivers on average received \$66,187 last year in gross earnings. Truck expenses reduced their earnings by an average of \$36,117, or by a little more than half (54%).⁶⁷ At the end of last year, port truck drivers took home an average net income of \$30,490.⁶⁸ Figure 3 shows that while a few drivers do well by port truck driving, making \$50,000 or more last year, half make less than \$30,000 a year and 23% make less than \$20,000. The vast majority of drivers work full time (88%), year round (89%), and do not hold second jobs to augment their family income (91%).



Photo by Eleiza Braun

“I barely see my two kids because I work 12-14 hours a day.

“My children have no health insurance, and I pray they don’t get sick, because I couldn’t afford to pay the medical bills.

“I encourage my kids to study hard and stay in school because I don’t want them to have a job like mine at the Port. No parent would want it for their child.”

- Yovani Hernandez, Port Truck Driver

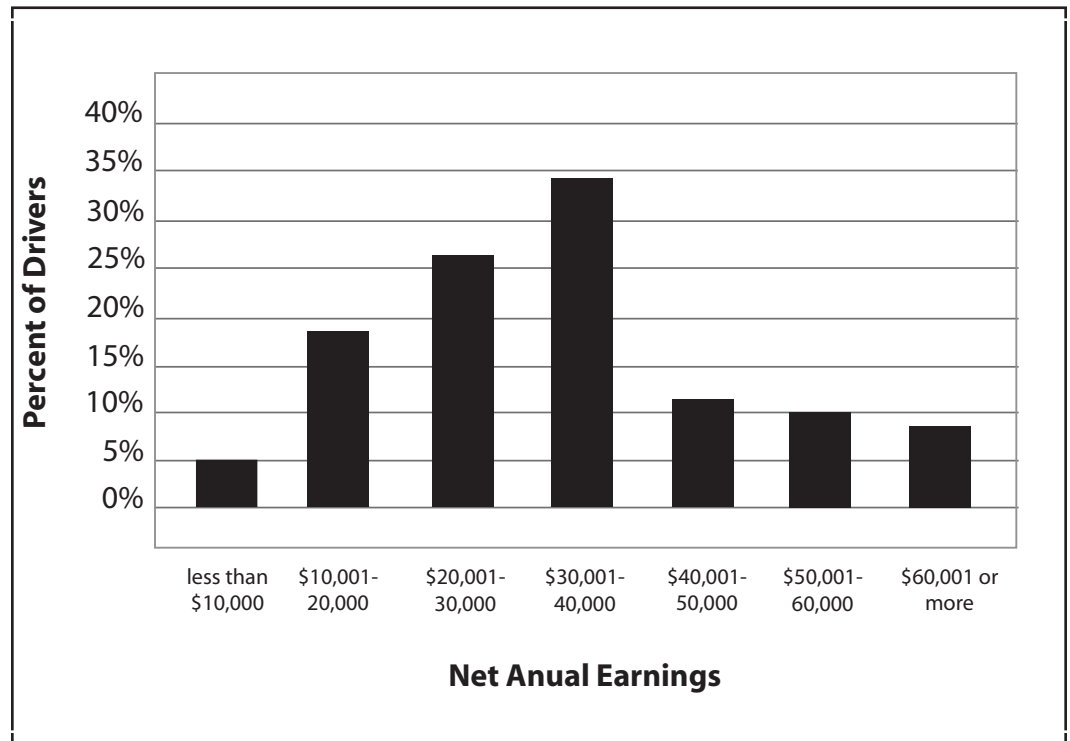
DRIVER MONTHLY EXPENSE CASE STUDY:

Yovani Hernandez grosses roughly \$6,000 per month, but works roughly 70 hours per week or 280 hours per month with long wait times. His estimated monthly expenses include:

- Fuel - \$1,500
- Truck Maintenance – \$1,400
- Registration – \$290
- Parking - \$200
- Road Tax - \$40
- Insurance - \$375
- Cell Phone - \$150
- TOTAL - \$3,955

Yovani’s net earnings total about \$2,045 per month or \$7.30 per hour.

Figure 3: Net Annual Earnings



Comparatively, port truck drivers make less than other drivers in the region. Heavy truck drivers employed by motor carriers in Alameda County make an annual average of \$42,197 in net income, 38% higher than the average for Port drivers.⁶⁹ Based on our survey, we found that other drivers at the Port of Oakland, who are either employees of motor carriers or who move goods across country, net an average of \$49,653.

Port Driver Wages Unsustainable for Families

Our survey found that truck drivers at the Port of Oakland are not earning enough to meet their families’ basic needs.

The meagerness of driver earnings are even more striking after factoring in the long hours that they work. The median driver wage is \$10.69 an hour.⁷⁰ Table 4 further shows that the bottom 25% of drivers make less than \$7.64 an hour, which is just above the State minimum wage of \$7.50 an hour. Three out of four drivers make less than \$14.01 an hour, while a very small number make more than \$18.08.

Table 4: Wage Quartiles

Percentile	Wage
25% (Bottom)	\$7.64
50% (Median)	\$10.69
75% (Top)	\$14.01
90% (Very Top)	\$18.08

These wages represent earnings unsustainable for supporting a family in the Bay Area economy. In Table 5, we compare average wages to several thresholds of economic hardship. First, we compare port driver wages to the Federal government’s poverty threshold.⁷¹ To support a family of four in the Bay Area economy above the poverty threshold, a worker would need to make at least \$12.02 an hour, \$1.33 more than the average Port driver. Sixty percent (60%) of the port drivers we surveyed made less than this amount.

Table 5: Driver Wages Fall Below Hardship Thresholds

Economic Hardship Threshold	Wage
Average Port Driver Wage	\$10.41
Port Living Wage	\$11.58
Poverty Wage, Family of Four	\$12.02
Basic Family Budget Wage	\$17.00

A majority (56%) of workers also made less than the Port’s own living wage threshold for 2006 of \$11.58. Although workers at the Oakland airport and on the Port’s marine terminals receive at least the living wage, port truck drivers are excluded because the motor carriers lack a direct relationship with the Port of Oakland that could trigger the requirement.

Finally, we compared drivers’ wages to a threshold based on the actual costs of living in the Bay Area, called a Basic Family Wage.⁷² The Basic Family Wage is determined by first estimating all the monthly costs a family needs to barely make ends meet,

56% of port drivers make less than the Port’s own living wage threshold of \$11.58 for 2006.

Drivers are excluded because the trucking companies lack a direct relationship with the Port that could trigger the living wage requirement.

30% of drivers surveyed reported taking themselves or family members to the ER to receive medical care in the last year.

Lacking jobs that pay a livable wage and provide affordable insurance, workers in the transportation sector cost California taxpayers nearly \$500 million in public safety-net programs.

including housing, food, transportation and medical insurance.⁷³ Then, a wage needed to meet those monthly expenses is derived. Table 5 shows that, in the Bay Area, two workers raising two children both need to earn \$17.00 an hour to pay for monthly basic necessities. Only 12% of port drivers make more than this survival wage.

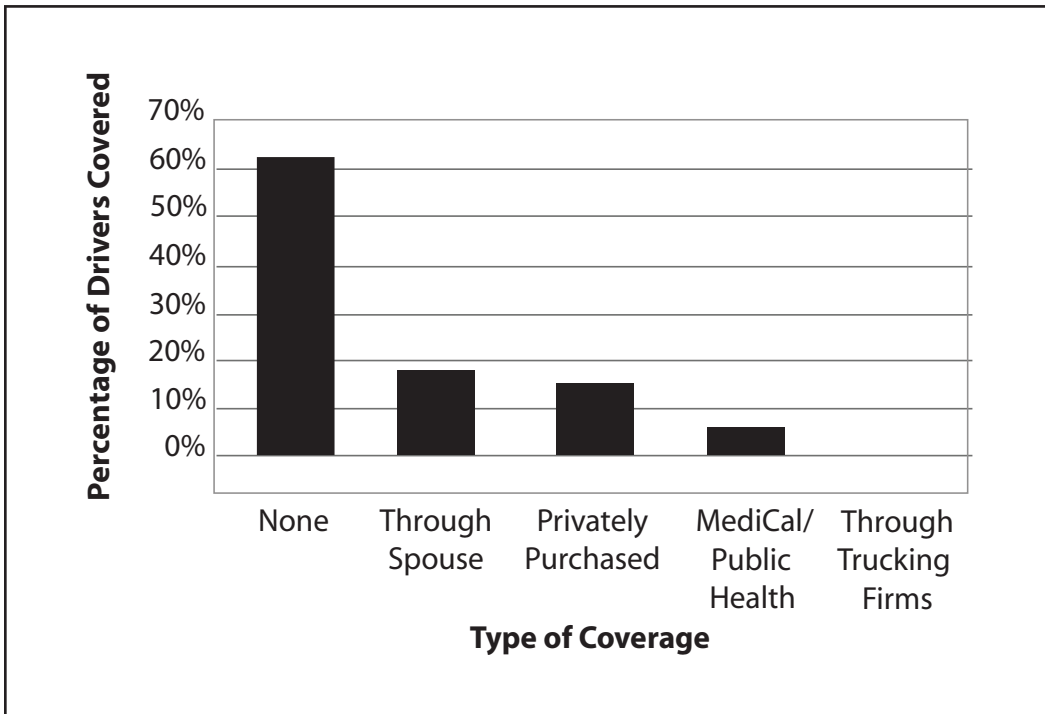
Driving Without a Safety Net

As independent contractors, port drivers cannot get health insurance from the motor carriers they work for. Nor can most rely on government-sponsored insurance, such as Medi-Cal or Healthy Families, because their gross incomes exceed program thresholds. Instead they must buy private health insurance or obtain coverage through a spouse or partner. Figure 4 shows that nearly two-thirds (62%) of drivers at the Port of Oakland reported receiving no health insurance of any kind. Seventeen percent (17%) of drivers receive health insurance through their spouse, fifteen percent (15%) purchase insurance privately, and only five percent (5%) are covered through a government sponsored plan.

For the nearly two-thirds of port truck drivers without any health insurance, the consequences of being uninsured extends to their families and the public. The lack of health insurance was not limited to single drivers, but was in fact nearly as prevalent for those with children in their household. Of the drivers that have children, over half (52%) have no coverage. Given the low wages received by port truck drivers, drivers and their families may be forgoing health insurance and medical care to pay for other basic needs, such as housing and food.

Lacking access to regular services, many uninsured persons turn to emergency medical care when family members are sick or injured.⁷⁴ Thirty percent (30%) of truck drivers reported having to take themselves or their family to the emergency room to receive medical care in the last year. Emergency care is considerably more expensive than preventive maintenance or routine medical care, and emergency room bills can create financial crises for families who live paycheck to paycheck. It is also well documented that reliance on emergency medical care by the uninsured result in high costs for the public and a drain on local public health systems.⁷⁵

Figure 4: Health Insurance Coverage



“As independent contractors, we can’t afford to fix our old trucks, or buy and maintain new trucks.

“I worry all the time, because as independent contractors, we do not have health benefits, but breathe toxic smoke everyday. What would happen if I got sick and couldn’t support my family?”

-Lorenzo Fernandez, Port Truck Driver

Emergency room care is only part of the public bill for providing medical care to the uninsured. The annual cost of all forms of public and charity care for the uninsured in the East Bay (Alameda County and Contra Costa Counties) is \$390 million a year.⁷⁶ Publicly-funded care provided to working families can be seen as a subsidy to businesses that require a healthy workforce to make a profit. One study showed that employment practices by Wal-Mart in California leads to an annual subsidy to the company of \$86 million, driven largely by the lack of employer-provided health insurance.⁷⁷ Overall, workers in the transportation sector cost California taxpayers nearly \$500 million in public safety-net programs.⁷⁸ Given that the total number of drivers at the Port of Oakland and their family members without health insurance of any kind could be as high as 2,884 the costs to the public for this industry are significant.⁷⁹

As independent contractors, port truck drivers cannot receive retirement benefits from the motor carriers they contract with. As a result, we found that only 12% of drivers reported a pension or retirement plan. This is a much lower rate of retirement savings than for all blue-collar workers (52%) and is especially alarming given that the average age of these workers is 40 years old.⁸⁰

Drivers are completely ineligible for workers compensation and State unemployment insurance and can only access disability insurance by paying premiums out of their own pocket. While most workers take for granted these safety net programs, port drivers are left to fend for themselves.

Concentrated Port diesel pollution exposes drivers to long-term risks of such respiratory diseases as lung cancer.

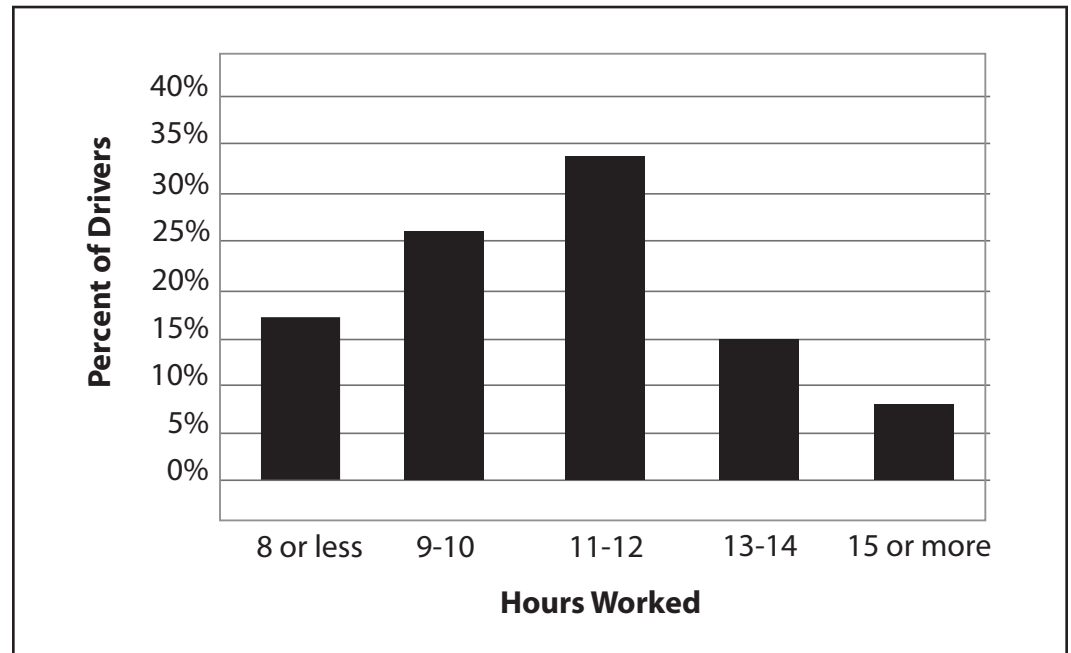
Working 11 hours days in a harsh environment, also puts drivers at risk for exhaustion and strain.

45% of port drivers reported a work-related injury in the past year.

Long Hours and Dangerous Conditions

Port truck drivers put in an average of eleven hours per day, compared to the average transportation and warehouse worker in the U.S. worker who works 7.4 hours per day.⁸¹ Figure 5 shows that 17% of them work an eight hour day or less. On the other hand, more than a fifth (22%) work thirteen or more hours per day, with some reporting working as long as sixteen hours in a typical day. Research on long-haul truck drivers suggests that they must work longer hours to earn wages comparable to blue-collar workers who have higher skills, such as factory or construction workers.⁸² As with long-haul drivers, most port drivers sacrifice time with their families and communities for more earnings.

Figure 5: Hours Worked in a Typical Day



Port truck drivers are also exposed to serious health and safety risks. When at the marine terminals, drivers are waiting in line amidst the highest levels of air pollution in the Bay Area.⁶³ Working 11 hours days in a harsh and stressful environment puts drivers at risk for exhaustion and strain. As a result, almost half of all drivers (45%) in our survey reported one or more work-related injuries in the past year. Drivers reported such ailments as back pain, hearing loss, nausea, dizziness, and chronic headaches. Furthermore, the concentrated diesel pollution at the Port exposes them to long-term risks of such respiratory diseases as lung cancer.⁸⁴

Finally, while port truck drivers own and maintain their tractors, or “bobcats,” they often pick up containers already seated on a chassis or trailer owned by another business, usually the steamship lines. Forty-five percent (45%) of them were provided trailers in the past year that were unsafe or not “road worthy.” Over one quarter (28%) of these drivers reported taking the trailer on the road regardless. Drivers experience a strong disincentive to wait for a replacement chassis, as they are not compensated while they wait.

Section 3

Fixing the Broken Port Trucking Industry

Despite the fact that most observers recognize that the port trucking industry has created a public health and workforce crisis, the industry continues to function much as it has the last 25 years. Our analysis shows that the independent contractor model is at the heart of the industry's problem – as long as drivers continue to be responsible for the operations of port trucks, getting shippers to assume their fair share of responsibility for the costs of pollution will be infeasible. Due to the large number of entities involved and steep public costs of inaction, the problem requires a comprehensive solution rather than incremental change.

Within the last year, the public health crisis of port trucking has reached a tipping point, with the State of California and its major ports (Los Angeles, Long Beach and Oakland) moving towards policy solutions. With a successful lawsuit halting port expansion in Los Angeles and Long Beach, port officials across the state have recognized that growth in trade will require dramatic emissions reductions. Although diesel emissions originate from ships and wharf equipment as well, reducing truck emissions is critical at all three of the major ports.

We assess in this section the viability of several types of proposals aimed at reducing emissions from port trucks. Four distinct strategies have emerged that seek to reduce diesel pollution. Each has considerable support from at least one or more of the major stakeholders in the port trucking industry. They are:

- 1) State air-quality regulations that mandate clean trucking standards for the industry, phased in over time;
- 2) Use of public funds to subsidize drivers to purchase cleaner trucks;
- 3) Industry self-regulation and generation of private revenue to invest in clean trucks;
- 4) Requirement of concession agreements between the Port of Oakland and port trucking companies that set minimum environmental and labor standards.



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*As long as
drivers
continue to be
responsible for
the operation
of port trucks,
shifting the
costs of
pollution and
its public
health impacts
back to the
shippers will
be difficult and
complicated.*

3 4 TAKING THE LOW ROAD:

How Independent Contracting at the Port Endangers Public Health,
Truck Drivers, and Economic Growth



Using local residential streets for parking and driving, trucks emit pollution within a few feet of nearby homes, schools, and businesses.

Trucks also create a pedestrian hazard and reduces the quality of life for West Oakland residents.

We use five criteria to assess the viability of these solutions, based on the analysis presented in the first two sections of this report:

a) **Will the strategy guarantee swift and sustained reduction of port truck emissions?**

It is not enough to reduce childhood asthma, pollution-related deaths and the long-term public costs associated with both; these goals must be pursued on an aggressive timetable. Significant emission reductions should be made within two to three years, and upgrade of the entire fleet should occur within five years.⁸⁵ Additionally, the strategy must include mechanisms to sustain reductions over the long-term.

b) **Will the strategy reduce the exposure of local residents to port truck emissions and truck traffic?**

The health crisis in neighborhoods surrounding the Port of Oakland, and especially West Oakland, arises from their proximity to the Port and from port trucks, which frequently use local streets and emit pollution within a few feet of nearby homes, schools, and businesses. In addition, when heavy trucks use residential streets for parking and driving, they create pedestrian hazards and reduce the quality of life. The City and the Port of Oakland have both identified removing heavy trucks from residential streets as a top priority.

c) **Will the strategy reduce the economic hardship of port truck drivers?**

In light of the evidence from the driver survey, any policy reform must not exacerbate the already precarious economic conditions of port truck drivers.

d) **Will the strategy facilitate Port management of environmental outcomes?**

The Port of Oakland is the public steward of a vital economic engine for the region and is accountable for the harmful impacts of its activities. The Port has much to gain from expanding trade opportunities, but everything to lose if it fails to plan responsibly. Port officials need the power and authority to manage the environmental impacts of port trucking, or other players will decide its future.

e) **Will the strategy require those most responsible for the harmful impacts of port trucking to assume a fair share of the cost of mitigation?**

The total costs of any economic activity, including social and environmental costs, should be borne by those who initiate and profit from the activity. In the case of port trucking, the shippers, especially the giant retailers who have systematically driven down trucking prices, should internalize the costs currently being borne by drivers, taxpayers, and surrounding residential communities.

Alternative #1: State Air Quality Regulations

The State of California has authority to regulate mobile sources of pollution, including cars and trucks. The California Air Resources Board (CARB) is already developing regulations to reduce emissions specifically from the port trucking industry.⁸⁶ The Port could rely on the State to create and enforce these regulations.

In brief, CARB's proposal will require all port trucks currently in operation to be retrofitted or replaced by 2011 in order to exceed recent (2003) Federal standards for new trucks. All trucks must be eventually replaced by 2019 and meet future (2010) federal standards. Drivers will provide CARB with evidence of truck improvements and then receive compliance stickers to display on their trucks. Drivers without compliance stickers will be turned away at marine terminal gates.

a) Will the strategy guarantee swift and sustained reduction of port truck emissions?

CARB's proposed port truck regulations will have some long-term effect on emissions. However, even assuming successful and timely implementation, the regulations will have limited immediate effects. CARB predicts that the new rules will not achieve significant diesel particulate matter (PM) reductions until 2012.⁸⁷ This timeframe is simply too long, given the immediate, growing public health crisis facing communities near the Port.

In the long term, the success of the proposed regulations will be hindered by the fact that responsibility for cleaning the truck fleet is being placed on those least able to afford it: the drivers. First, the State will not test trucks directly for emissions reduction, but use self-reported upgrades to new technology by drivers as a proxy. Given the high costs of new, clean engine technology, drivers will have a strong incentive to report mandated technology implementation without ensuring actual reductions in emissions. Relying on marine terminal operators for enforcement is also unlikely to be effective, as they have little incentive to turn away trucks from their gates.

Furthermore, newer, clean trucks, with sophisticated electronic systems, are substantially more expensive to purchase and maintain than the trucks most drivers currently use. One way that many drivers have made trucking viable, despite their low compensation, has been to perform their own vehicle maintenance or use local mechanics. With limited capacity to pass on higher costs to trucking firms and shippers, drivers will have an incentive to forgo proper installation and maintenance of the new technology. The new rules may appear promising, but are unlikely to result in CARB's long-term projections of emissions reduction.

**For our analysis we examined ARB's June 2007 draft regulations. As the report was moving towards publication, ARB released an updated draft regulation that has a more aggressive time table for upgrades.*



Newer clean trucks have sophisticated electronic systems that are more expensive to maintain, placing even greater financial burden on the drivers.

The California Air Resources Board's proposal will likely prove unsuccessful because it places the entire financial burden of upgrading trucks onto those who can least afford it - the primarily "independent contractor" drivers.

Without the ability to bargain for higher rates as a group, drivers would need to absorb these additional costs.

b) **Will the strategy mitigate the risks of local residents' exposure to port truck emissions and truck traffic?**

To the degree that state-wide regulations are successful, they should reduce pollution emitted by trucks on local streets. However, even cleaner trucks emit some pollution and trucks parking overnight on residential streets still emit concentrated bursts of diesel pollution on start-up. And, regardless of how much cleaner the trucks are, they still increase road hazards and decrease the quality of life. The proposed rules would not, in and of themselves, remove trucks from local streets, nor assist the City and Port in implementing existing local policies, like the Truck Routing ordinance.

c) **Will the strategy reduce the economic hardship of port truck drivers?**

The proposed state regulations will most likely increase the economic hardships for drivers by placing the entire financial burden of upgrading trucks on truck owners, i.e., mostly independent contractor drivers rather than trucking firms. The costs for newer trucks are exorbitant compared to the older trucks currently in use. A survey of drivers at the Ports of Los Angeles and Long Beach showed that the median price paid by drivers for their current trucks was \$18,000.⁸⁸ A new, cleaner-running 2007 truck costs \$100,000 to \$140,000.

In a functioning market, these additional costs would be passed along in the form of rate increases, allowing drivers to recoup their higher expenses. However, the extremely weak bargaining position of drivers, and even the trucking firms, relative to shippers will limit the drivers' ability to negotiate adequately higher rates. Some drivers may be forced out of port trucking altogether and those that remain will likely be pushed further into economic hardship. This could further destabilize the industry through increased driver turnover and labor unrest.

d) **Will the strategy facilitate Port management of environmental outcomes?**

This policy option offers very limited local control of outcomes. The Port would be largely at the mercy of implementation efforts by state agencies. At best, Port officials could help identify trucks without required compliance stickers, on a truck by truck basis. However, it is unclear that the Port could recoup the costs of this kind of enforcement. The Port could also play some role in enforcement by requiring implementation steps in its lease agreements with the terminal operators. However, this would counter the Port's long-standing practice of terminal operator autonomy and would take several years, as most of those agreements are long-term.

e) **Will the strategy shift the cost of port trucking to those most responsible for the public costs of port trucking activity?**

In theory, the costs of complying with State regulations should be passed on to those that profit most from the present trucking system: the cargo owners. However, as previously discussed, the shippers (cargo owners) are not likely to pay the full costs. If they remained powerless to bargain higher rates, independent contractor drivers and the trucking firms would either absorb a large share of the costs or try to avoid them altogether by undermining compliance. State regulations would ultimately put the greatest financial burden of cleaning the port fleet on those least able to pay, the owners of the trucks.

Alternative #2:**Use of Public Funds to Subsidize Clean Trucks**

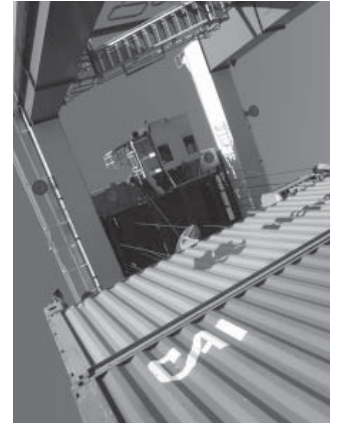
For any given externality, where businesses shift the cost of production to the public, government has the option of using public money to fix the problem. In the case of port trucking, the Port of Oakland, or another public agency, could pay for upgrading the truck fleet with public funds. The Port of Oakland and the Bay Area Air Quality Management District already employ small-scale examples of this approach.⁸⁹ For this strategy, we examine a large-scale proposal to upgrade the entire port truck fleets with funds from the recently passed Infrastructure Bond and implementation of terminal entrance fees. This kind of program has been proposed for both the Port of Oakland and the Ports of LA and Long Beach.

a) **Will the strategy guarantee swift and sustained reduction of port truck emissions?**

If the public investment can be made within a short implementation period, this policy option will undoubtedly reduce truck emissions in a timely manner. However there are compelling reasons to believe that the public funds may not materialize, and even if they do, emissions levels will increase again over time as the new trucks age and require expensive maintenance.

We estimate that the total price tag to replace all 1,500 locally-operated trucks at the Port of Oakland will be approximately \$150 to \$187 million.⁹⁰ A similar program at the Ports of Los Angeles and Long Beach is estimated to cost \$1.8 billion.⁹¹ While the ports have some capacity to raise local revenues, they would depend greatly on use of the recently approved state transportation bonds. However, experts doubt that the ports would receive much, if any, funding from these state bonds.⁹² First, only a limited amount, \$1 billion, is available for air quality measures involving all goods movement. Given the State's goals for greenhouse gas reduction, there are many competing demands for this funding. Second, use of 30-year infrastructure bonds on trucks with a replacement cycle of 10-12 years may go against the understood purposes of the bond measure and create a voter backlash against state officials.

Even if the Port can obtain bond funding, emission reductions will likely be unsustainable. As with air regulations, responsibility for buying and maintaining the new trucks will fall on the shoulders of mostly independent contractor drivers. As already discussed, the cost of maintaining new trucks will be prohibitively expensive for drivers, if they remain unable to pass increased costs on to shippers. Second, it is possible that drivers will leave port trucking and move to a more lucrative trucking sector, resulting in a shortage of both drivers and clean trucks. Finally, when the useful life of the subsidized clean trucks is over, port drivers will be in no better position to replace them. It is unlikely that the public would provide a second massive subsidy to the port trucking industry.



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Funding clean trucks with public money would place the true costs of port trucking squarely on taxpayers, creating a massive public subsidy for some of the largest corporations in the world.

By creating a public subsidy to replace 1,500 trucks, it would cost California taxpayers roughly \$150-\$187 million and do nothing to fix the port trucking industry.

After the useful lifecycle of the cleaner truck is over, port drivers will be in no better position to replace them.

- b) **Will the strategy mitigate the risks of local residents' exposure to port truck emissions and truck traffic?**
As with the air regulation proposal, short-term replacement of port trucks may reduce emission exposure in local neighborhoods. Even with funding, however, the program does not increase the ability for the Port or the City to better enforce new or existing laws to keep port trucks off of local streets.
- c) **Will the strategy reduce the economic hardship of port truck drivers?**
Heavily subsidizing new trucks may compensate for the initial steep investment required by drivers to mitigate diesel emissions, but the program poses economic problems in both the short and long-run. Initially, port drivers who receive a government subsidy would likely need to pay taxes on the value of the \$100,000 truck.⁹³ Even if drivers were offered bridge loans to pay the taxes, the subsidies could increase drivers' economic vulnerability. Furthermore, as discussed above, new, clean trucks with computer-controlled emissions systems are significantly more expensive to repair. Self-repair and "curb-side" mechanics will no longer be an option. Once the initial warranties expire, drivers will have to bear these costs alone. Again, because this program would not increase their bargaining power in relationship to trucking companies or shippers, drivers may be forced to absorb the increased costs or simply forgo maintenance. Without another massive subsidy, diesel pollution would increase again.
- d) **Will the strategy facilitate Port management of environmental outcomes?**
Buying clean trucks would likely create only a moderate level of accountability between the Port of Oakland and individual truck drivers. If the Port of Oakland implemented the program, it could exert some level of control through the subsidy or loan agreements between the Port and the drivers. However, monitoring compliance for 1,500 agreements would require substantial staff resources. This would at least triple the number of agreements that the Port staff currently monitor for compliance. In the long run, it is unlikely that the Port would be able to control emissions once drivers began to face high maintenance costs.
- e) **Will the strategy shift the cost of port trucking to those most responsible for the public costs of port trucking activity?**
Funding clean trucks with public money would place the true costs of port trucking squarely on taxpayers, essentially creating a massive public subsidy for some of the largest corporations in the world. If this approach is adopted, the result is that taxpayers will spend hundreds of millions of dollars to purchase clean trucks that are likely to become ineffective within a few years due to drivers' inability to maintain them.

Alternative #3: Industry Self-Regulation and Investment in Clean Trucks

In broader policy debates over regulations, industries often propose some form of self-regulation when their activities result in pollution or public hazards. For port trucking, we examine one such proposal recently made by the Waterfront Coalition, a collaboration of shippers, steamship liners, marine terminal operators and major motor carriers.⁹⁴ The proposal calls initially for marine terminal operators to charge gate fees. Increasingly steep gate fees would ostensibly create an incentive for port drivers to invest in their own trucks and, simultaneously, create a fund from which trucking firms and independent drivers could borrow money [i.e., for upgrades]. Both the gate fees and the subsidy program would be administered by the marine terminal operators (members of the Waterfront Coalition). The fees would be eliminated once the State has adopted regulations for all freight trucks in California, not just port trucks, and created a tax incentive program for truck investment. For this analysis, we focus on the gate fees and privately administered subsidy program.

a) Will the strategy guarantee swift and sustained reduction of port truck emissions?

Allowing the shipping industry to self-regulate is unlikely to create significant emissions reductions in either the short-term or long-term. As with the previous two proposals, the burden of investing in clean trucks will fall entirely on the shoulders of truck owners. Given that the program draws all its revenue from those least able to pay, the drivers, the initial revenues would be inadequate to achieve significant, short-term emission reductions.

As a program self-administered by the marine terminal operators and the shippers, it may be undermined by conflicts of interest between parties. At the same time as shippers are helping to impose upgrade costs onto port drivers, the shippers will continue to apply downward pressure on truck shipping rates. Drivers will be squeezed even more severely.

Even if the Waterfront Coalition proposal achieved partial success, it depends on eventual phase out of the gate fees and reliance on State air quality regulations and tax incentives. In the long-run, this strategy faces the same problems as the first two discussed above.

b) Will the strategy mitigate the risks of local residents' exposure to port truck emissions and truck traffic?

Given the shortcomings of this strategy, both in the short and long-run, mitigation of direct emissions seems unlikely. Furthermore, the strategy provides no means for the private companies involved to help remove port trucks from local streets, nor does it provide the Port or City of Oakland any mechanism to enforce such requirements.



Industry self-regulation has not proven fruitful in the last 25 years. The Waterfront Coalition's proposal suggests no role for Port authorities in addressing the impacts of port trucking, regardless of whether they are workforce, community, or environmental impacts.



The concession agreement model borrows from an existing Port business model used successfully in other industries. It will shift the responsibility of investing in clean trucks off “independent contractor” drivers and onto trucking companies.

- c) **Will the strategy reduce the economic hardship of port truck drivers?**
In the short-run, this strategy is the most likely of the four discussed here to worsen the economic situation of port drivers. Using gate fees as a penalty for drivers of older trucks punishes the independent contractors with the least capital. Even if a driver manages to obtain a subsidy from the program, gate fees will likely result in lower take-home earnings for truck drivers. Essentially, the same private sector players that benefit from sub-standard compensation for port drivers are proposing to increase driver expenses without giving them a clear means to pass those costs back to the shippers. In the long-run, driver conditions will not improve, for the reasons discussed in the first two proposals.
- d) **Will the strategy facilitate Port management of environmental outcomes?**
The shipping industry’s proposed solution suggests no role for Port authorities in addressing the impacts of port trucking, regardless of whether they are workforce, community, or environmental impacts.
- e) **Will the strategy shift the cost of port trucking to those most responsible for the public costs of port trucking activity?**
The likely failure of this policy will result in continued costs to the public through pollution, community hazards, and significant health risks. Additionally, if drivers are unable to pass along the costs of the gate fees and maintenance costs of new trucks through higher rates it will further destabilize the industry through increased driver turnover and labor unrest.

Alternative #4: Concession Agreement Model

The fourth strategy borrows from an existing Port of Oakland business model practiced by its own Airport Division. The Airport Division requires any firm providing services at the airport to enter into a “concession agreement” with the Port. Concession agreements allow the Port to set standards for private companies doing business on Port land, coordinate private sector activities and generate revenue. For example, all rental car firms at the airport have agreements with the Port that establish minimum operating standards and require a fee equal to 10% of their gross operating revenues. The fees help pay for airport infrastructure improvements, including rental car facilities, as well as general airport management. The concession model has been used successfully not only by the Port of Oakland, but by airports across the United States.

The Ports of Los Angeles and Long Beach have recently proposed a Clean Trucks Program that primarily relies on this strategy.⁹⁵ The concession model will create a direct, contractual relationship between the Port and each trucking company.⁹⁶ The port grants trucking firms the right to access port land and facilities in exchange for meeting environmental, labor and other standards. Trucking firms without an agreement will not be allowed to access the marine terminals.

The agreements require that trucking firms be responsible for quickly upgrading to clean truck standards. They also require that trucking firms hire their drivers as direct employees rather than subcontract with them.⁹⁷ The program would be funded by a concession fee charged to the trucking firms.

We should also note that a concession agreement can help the Port of Oakland achieve its security and social goals. Security standards will become especially important as U.S. ports implement stricter protocols on container shipping in the near future. Social goals are incorporated in existing Port policies, such as local hiring and small business utilization.

a) **Will the strategy guarantee swift and sustained reduction of port truck emissions?**

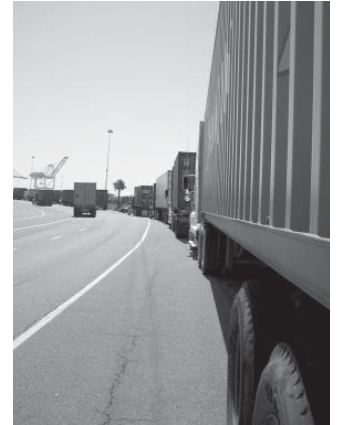
This strategy uniquely positions the Port to achieve fast and sustained emissions reductions. Most importantly, the concession agreement strategy shifts the responsibility of investing in and maintaining cleaner trucks off independent contractor drivers and onto trucking firms. In the near term, the Port can require replacement or retrofit of older trucks within only a few years. Although this will be initially costly for the trucking firms, each firm must meet the same standard at the same time and none will be put at a competitive disadvantage. In the long term, the concession agreements would require that trucking firms continue to invest in newer technology and provide ongoing maintenance. Although the trucking firms have historically operated on very thin margins, universal operating standards would allow them to recoup increased short and long-term costs from the shippers. In essence, purchasing and operating cleaner trucks is taken out of the fierce competition that has driven port trucking rates to the bottom.

b) **Will the strategy mitigate the risks of local residents' exposure to port truck emissions and truck traffic?**

Through concession agreements, the Port could require not only clean truck standards in general, but operating standards that remove trucks from local streets. The Port could also institute mandatory truck routes, hold trucking firms accountable for illegal use of local streets, and require them to provide over-night parking solutions, either in the Port's parking facilities or their own. This would both reduce direct emissions and improve the quality of life in surrounding residential neighborhoods.

c) **Will the strategy reduce the economic hardship of port truck drivers?**

Of all the strategies we assess in this report, the concession agreement strategy is the most likely to reduce the economic hardships facing port drivers. Most importantly, a concession agreement policy relieves drivers of the financial burden of buying and maintaining cleaner trucks. It also shifts their status from independent contractors to employees, bringing a whole set of benefits. As employees, drivers would have immediate access to employer-sponsored safety-net programs – disability insurance, unemployment, and workers compensation – from which they are currently excluded.



Although the trucking firms have historically operated on thin margins, universal operating standards will allow them to recoup increased short and long-term costs from the shippers by putting no one firm at a competitive disadvantage.

4 2 T A K I N G T H E L O W R O A D :

How Independent Contracting at the Port Endangers Public Health,
Truck Drivers, and Economic Growth

With the concession model, the Port has tremendous influence over the trucking firms to hold them accountable.

It is the only model that allows all costs for clean air to be passed onto shippers in that it creates a floor and puts no one trucking firm at a competitive disadvantage.

Drivers would be eligible for employer-sponsored health insurance, greatly increasing the likelihood that they and their families would acquire health coverage. Trucking firms could also offer retirement benefits as a way to compete for experienced drivers. Finally, employee drivers will have a greatly improved ability to bargain for better compensation and benefits, both individually and collectively. As employees, drivers would be free of the legal barriers that currently prevent them from discussing rates and compensation. The Port could also require labor peace guarantees from trucking firms, which would provide a non-disruptive method to resolve labor disputes and increase the likelihood of uninterrupted service.

d) **Will the strategy facilitate Port management of environmental outcomes?**

The concession agreement strategy offers many advantages to the Port in holding the trucking industry accountable for environmental harms. First, it creates a binding contract with port trucking firms through which the Port has tremendous influence over firm activities. If a trucking firm does not comply with the minimum standards in the agreement, the Port can impose fees, require a remediation timeline or end the agreement and the firm's access to Port facilities. Second, the concession model is a considerably more flexible policy tool than State regulations. The Port and the trucking firms can respond to changes in market conditions and environmental outcomes by changing standards in the agreements. Third, by holding trucking firms responsible for operating clean trucks, the Port greatly reduces the number of private entities involved. Instead of worrying about thousands of drivers and firms, the Port can focus its enforcement and monitoring resources on the much smaller universe of trucking companies. Finally, requiring an employer-employee relationship will create clear lines of responsibility between drivers and trucking companies. Trucking firms will be accountable to the Port for the actions of their drivers, which, in turn, will cause trucking firms to discipline drivers who violate truck routes or parking rules.

e) **Will the strategy shift the cost of port trucking to those most responsible for the public costs of port trucking activity?**

Of all the strategies compared, only the concession agreement model offers a structural improvement to the bargaining position of trucking firms. Because all trucking firms will be required to meet the same standards, trucking firms will have new, comparable, fixed costs that shippers will likely find hard to negotiate down. Additionally, implementing standards at the same time ensures that no segment of the industry is placed at a competitive advantage. While trucking firms may absorb some of the increased costs, their already thin profit margins will result in most of the costs being passed on in increased shipping rates.

Conclusion

All of the proposed strategies hold at least some potential to reduce the environmental impacts of the port trucking industry. State air regulations create clear standards that apply to all truck owners, at the same time. Public subsidies would remove the challenge of initially finding a large pool of capital to help drivers upgrade the truck fleet. The Waterfront Coalition proposal's gate fees would initially require no public subsidies, freeing the Port to spend money on other aspects of port truck management. However, all of these strategies risk failure by not addressing the underlying, dysfunctional structure of port trucking. In all three strategies, the current problems with port trucking – truck use of local streets, poor driver economic conditions, lack of Port power to mitigate pollution and the powerlessness of trucking companies in the market – would likely be exacerbated, in either the short-run or long-run.

Even if the strategies were combined, such as by pairing air quality regulations with public subsidies, port truck drivers would still be left with all the responsibility for investing in and maintaining clean trucks. And lacking a direct relationship with the industry, the Port would continue to have only a minimum level of influence on the harmful consequences of its activities.

Only the concession agreement model avoids these pitfalls and allows the Port to ensure port truck pollution does not jeopardize its future. The concession model offers the most flexible and comprehensive approach, with the least risk of program failure. It is also the only strategy that concretely improves economic conditions for drivers.



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Wide-spread classification of port drivers as “independent contractors” has led to a fragmented industry that cannot manage environmental and community impacts.

Section 4

Summary and Recommendations

The port trucking industry is currently an impediment to the Port of Oakland’s future growth. The industry pollutes surrounding communities and fails to provide good jobs for the drivers. While the four proposals we analyze for mitigating the problems with port trucking are not mutually exclusive, any of the proposed policy solutions must contend with the two, current structural failings of the industry. First, the wide-spread classification of port drivers as independent contractors leads to poor economic outcomes for the drivers and lowers barriers-to-entry resulting in a fragmented, hyper-competitive industry that cannot manage its environmental and community impacts. Second, while the port trucking industry is a critical component of Port operations there is no direct relationship between the Port of Oakland and the port trucking companies. Given the Port’s need to plan mitigations for maritime activity both on and off its property, any successful proposal for port trucking must enable the Port to establish such a relationship.

Only one solution addresses the structural failings of independent contractors and the absence of a direct relationship between the industry and the Port – the concession agreement model. Not only does the concession model give the Port more control over trucking firm practices, it is the only solution that can transition drivers to employees. The concession model would allow the Port of Oakland to set high environmental and labor standards for the trucking industry, and they would give the Port the tools to enforce these standards. In cases of non-compliance, the Port could use fines, agreement termination, and debarment to ensure compliance. Finally, the Port could include other policy goals in the concession agreements, such as Port security, community safety, local hiring and local business utilization. The concession model offers the most flexible and comprehensive approach, with the least risk of program failure.

Although the Port of Oakland faces challenges different from those of the Los Angeles and Long Beach Ports, their recently proposed Clean Trucks Program provides thoughtful policy direction for the Port of Oakland to implement a similar program. We recommend that the Port of Oakland implement the following steps as part of its own “Clean Trucks Program”:

- **Concession Agreements:** The Port should require that all port trucking firms that access the marine terminals enter into concession agreements. Trucking firms without concession agreements could not access Port facilities. As concession agreements are renewed and negotiated, they should be continuously improved to reflect contemporaneous best practices.
- **Operating Standards:** The Port should incorporate environmental, community and labor standards into the concession agreements, including:



Only one solution addresses the structural failings of independent contracting and the absence of a direct relationship between the industry and the Port – the concession agreement model.

- *Environmental Standards*
 - Require trucking firms to meet clean truck standards on an accelerated schedule to reduce emissions and the health impacts of port trucking.
 - Require trucking firms to use the cleanest available trucks and technology available at the time of replacement and/or retrofitting of the trucks.
- *Neighborhood & Community Standards*
 - Provide off-street parking for trucks outside of residential neighborhoods in order to minimize their public health impacts.
 - Comply with all current municipal truck route ordinances and all other applicable local, state, and federal regulations to reduce truck impacts on residents of affected communities.
- *Economic Opportunity Standards*
 - Provide technical support and prioritize incentives to small, local trucking companies to ensure that they can succeed economically while meeting all environmental, labor, and community standards.
 - Require trucking companies to meet local hiring standards to increase access to trucking jobs for people in communities affected by Port operations, like West Oakland.
- *Labor Standards*
 - Require trucking firms to transition all independent port drivers to employee status upon entering into the concession agreement. The agreement should not prevent drivers from continuing to own their own vehicles.
 - Require firms to guarantee “labor peace” to prevent labor disruptions and to protect the Port’s proprietary interest in uninterrupted service.
 - To prevent worker injury and illness, the Port should work with trucking companies, labor unions, and health advocacy organizations to establish occupational health and safety standards.
- **Revenue Mechanisms:** The Port should create a revenue generating mechanism to help fund implementation of the environmental, community, and economic opportunity standards.
- **Monitoring & Oversight:** The Port should create a permanent and transparent institutional process to monitor all aspects of this policy.
 - The Port should establish a Port Trucking Social Justice Committee, modeled on the MAPLA Social Justice Committee, composed of all the stakeholders (including, but not limited to, trucking companies, community organizations, environmental organizations, Port staff, workforce development organizations, labor unions) to monitor and oversee all the aspects of this policy.
 - The Port should clearly articulate which divisions, agencies, and staff are responsible for monitoring each standard.

Survey Methodology

Survey Sample

Government data sources on the characteristics of workers and jobs, such as those generated by the Census Bureau and the Bureau of Labor Statistics, do not adequately distinguish between employee truck drivers and independent contractor drivers or between over-the-road drivers and port drivers. As a result, most research on heavy truck drives relies on original survey data. We followed the example of other research on port truckers in conducting our survey of this workforce.⁹⁸

As the Port of Oakland does not require registration by either the motor carriers that provide port trucking services or the drivers, it was not possible to construct a comprehensive list of all drivers. Consequently, it was not possible to generate a random sample of drivers. As a result, we cannot apply tests to arrive at statistically robust conclusions about the whole port truck driver population. However, in the most important selection characteristics that could create bias in our results, such as ethnicity/nativity, residency, earnings and types of driving (over-the-road, local pick-up and delivery and land bridge) our survey yielded substantial diversity and depth within groups. This combined with a low refusal rates (see below) leads us to believe that it sufficiently represents the Port of Oakland driver population to make generalizations.

Survey Implementation

We surveyed port truck drivers waiting in line to enter the marine terminals, before the gates opened. During this time, trucks are parked, drivers are generally available and the environment is non-hazardous to foot surveyors. The survey instrument was self-administered. We surveyed at eight of the accessible nine marine terminals, all except the Charles E. Howard domestic terminal, which was physically inhospitable to surveying. Surveying took place between 5:30 and 7:00 am on the busiest days, Tuesdays, Wednesdays and Thursdays, during the last two weeks in February and first two weeks in March. The five-person survey team included Vietnamese, Punjabi and Spanish speakers who surveyed drivers with limited English capacity.

Although the Port has no record of how many port truck drivers enter and leave the marine terminals, Port officials have recently estimated that 1,500 drivers use the Port on a daily basis. Port officials inform us that another, substantial group of drivers call on the Port less frequently. Hence, we estimated that 2,000 drivers provide trucking services at the Port and set a 10% target of 200 completed surveys. (Note that our sample size was similar to surveys in Long Beach and Seattle, but those Ports have considerably more drivers than in Oakland.) We collected a total of 202 surveys. Only 32% of drivers refused the surveys, which is considerably lower than the standard 50% refusal rate associated with surveys of this design. This compares favorably to the response rates at other ports. See the table below for a comparison of survey methods and results.

West Coast Survey Reports

Survey Methods and Results	Port of Oakland (2007)	Seattle (2007)	LA-LB Gateway (2007)	LA-LB Monaco (2004)	LA-LB Metrans (2007)
Location	gates	gates	motor carrier premises	gates	catering trucks
Languages provided	English Spanish Vietnamese	English	English Spanish	English Spanish	English Spanish
Refusal rate	32%	40%	n/a	35%	33%
Total sample of drivers	202	162	209	175	197
Estimated driver population	2,000	n/a	12,000	12,000	12,000
Proportion sampled	10%	n/a	2%	1%	2%
Number of local, independent contractors sampled	123	113	209	126	155
Percent local, independent contractors	61%	70%	100%	72%	79%

Survey Instrument Design

The survey instrument included 54 questions and took 10-15 minutes to complete. Many questions were borrowed directly or modified from the survey instrument developed for Monaco and Grobar’s 2004 study of drayage at the ports of Los Angeles and Long Beach. The survey instrument was piloted with a group of five truck drivers in mid-February and revised slightly based on results and feedback from the pilot group. The instrument was available in English, Spanish and Vietnamese, of which the vast majority of drivers spoke at least one.

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Survey Analysis

Of the 202 drivers, 123 identified as local independent contractors who either drove their own truck (105) or drove someone else's (18). Our analysis focused entirely on these local, independent contractor drivers and excluded local employee drivers and all non-local, long-haul drivers.

Given that some respondents did not answer all questions, as is typical for this kind of survey, most questions analyzed did not have the full 123 of responses of independent contractors. For percentage analyses, we used the number of valid responses for a particular question as the denominator. No analysis contained a cell of less than 30 responses.

For the analysis of earnings and wages, outliers representing unrealistic results at both extremes were removed. For example, a few drivers reported more expenses than gross earnings, while a few reported impossibly high earnings relative to the hours worked.

Endnotes

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³⁵ TIAX – Container Truck Traffic Assessment

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³⁹ Interview with Margaret Gordon, Co-Director of the West Oakland Environmental Indicators Project, Aug. 28, 2007.

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⁴⁵ See Incentivizing Truck Retrofitting in Port Drayage: A Study of Drivers at the Ports of Los Angeles and Long Beach, METRANS Transportation Center USC/CSULB, Kristen Monaco, January 2007; Big Rigs, Short Haul: Truckers at the Port of Seattle, Port Jobs, 2007; and A Survey of Drayage Drivers Serving the San Pedro Bay Ports, prepared for The Gateway Cities Council of Governments by CGR Management Consultants, March 2007.

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⁵⁷ Section 4 shows that port drivers make meager wages and receive no benefits for very hard work.

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⁶⁰ For a national estimate of driver turnover, see Ken Kellaway, “Intermodal Drayage ‘The Missing Link,’” presentation to the Agriculture Ocean Transportation Coalition, 2006. Mr. Kellaway, Chief Commercial Officer of Roadlink USA, one of largest port trucking companies in the country, asserted that driver turnover in the industry was 135%. Contact EBASE for a copy of this presentation.

⁶¹ The Port of Oakland’s initiatives include the Maritime Air Quality Improvement Plan (MAQIP) Stakeholder Planning Process, the Seaport Emissions Inventory, and the Truck Replacement Program. The MAQIP is a joint community-government process to plan future environmental mitigations. The Seaport Emissions Inventory estimates the amounts of certain types of air pollutants generated by the ships, trucks, trains, harbor craft, and cargo handling equipment at the Port of Oakland during 2005. The Truck Replacement Program provides up to \$40,000 for drivers to purchase newer, cleaner trucks.

⁶² *Working for You to Make a Difference*, Port of Oakland, 2007.

⁶³ *Clean Air Action Plan – Overview*, Ports of Los Angeles and Long Beach, 2006.

⁶⁴ Nicole Stoops, “Educational Attainment in the United States: 2003,” *Current Population Reports*, U.S. Census Bureau, June 2004 (www.census.gov/prod/2004pubs/p20-550.pdf).

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⁶⁸ The calculation for each driver was Gross Earnings – Total Expenses = Net Earnings. Based on response rates to questions required for this calculation, we were able to estimate Net Earnings for 94 drivers.

⁶⁹ California Department of Employment Development, Occupational Employment (May 2006) & Wage (2007 - 1st Quarter) Data, <http://www.labormarketinfo.edd.ca.gov>.

⁷⁰ The wage levels calculated from our analysis of the survey data are also consistent with the wages levels reported in the studies of the other ports.

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⁸⁶ “Draft Regulation Order: Regulation to Control Emissions from In-Use On-Road Diesel-Fueled Heavy-Duty Drayage Trucks,” California Air Resources Board, July 6, 2007.

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⁸⁹ The Port of Oakland’s Truck Replacement Program provides drivers up to

\$40,000 for the purchase of newer trucks. Over 40 trucks have been replaced to date. The BAAQMD administers the Carl Moyer Program, which provides grants to reduce emissions from any heavy duty diesel engines in the region. The Ports of Los Angeles and Long Beach have offered a similar program through the Gateway Cities Program.

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⁹⁷ The concession agreement does not require that trucking firms own all of their trucks. Employee drivers can continue to own their own vehicles as owner-operators, but responsibility for upgrades and operating standards falls on the firms.

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advances economic and social justice by building power
and raising standards for working families.*



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