

**BY HAND DELIVERY AND EMAIL**

Antonio V. Gioiello  
Chief Harbor Engineer  
The Port of Los Angeles  
425 S. Palos Verdes Street  
San Pedro, CA 90733-0151

March 18, 2014

Re: Removal of Pier A Yard from service; relocation to Berth 200 Rail Yard

Dear Mr. Gioiello:

This is in response to your letter to me, dated February 7, 2014 (the "Letter"), in which The Port of Los Angeles ("POLA") purported to provide Pacific Harbor Line, Inc. ("PHL") with "official 60 day written notice to PHL and ... [Union Pacific Railroad ("UP") and BNSF Railway Co. ("BNSF")] to completely vacate the current Pier A Yard (office building and operating yard) effective April 7, 2014." You indicate in the Letter that the notice was provided in accordance with Section 2.2 of the San Pedro Bay Harbor Operating Permit, dated as of December 1, 1997 (the "Operating Permit") and Section 5.1 of the Permit to Use Tracks Agreement between UP, BNSF and the Port, dated as of December 1, 1997. The Letter states that, "[e]ffective April, 7, 2014 ... [the Railroads] shall be fully operational out of the new Berth 200 Rail yard."

Please be advised that, based on facts on the ground today, it appears clear that Berth 200 Yard will not be fully operational on April 7, 2014. As you know, the construction work in Berth 200 Yard has not been completed as of the date of this Letter and will not be completed by April 7, 2014. In an inspection performed by PHL on March 14, 2014 (the "PHL Inspection"), Robert Giannoble, PHL's Chief Engineer, and I identified numerous, material non-compliances with applicable federal, state and city regulations. Given the current state of the construction project, and our understanding of the construction schedule going forward, these non-compliances will not be rectified by April 7, 2014. Moreover, until the construction is completed, it will not be possible to perform a final inspection to verify compliance of to-be-completed portions of Berth 200 Yard with applicable regulations.

The PHL Inspection identified numerous non-compliances with CA PUC General Orders 26 (Clearances On Railroads) and 118 (Walkways Adjacent To Railroads). These include violations with respect to portions of the Yard that are considered by POLA to be complete, including without limitation the following:

1. SPM2: station 345-350; field side ditch and lacks 2 ft. walkway (GO 118)
2. MCF1: station 144-149; 11 ft. track centers (adjacent track is currently out of service until resolved (GO 26 & GO 118)
3. PAWL: station 160-170; fire hydrants, yard lighting conduit trench are within clearance envelope; unpaved roadway obstacles in walkways (GO 26 & GO 118)
4. PAWL: station 170-180; unfinished ballast and no walkway ballast installed (GO 118)
5. PA01-07 & PA14-15: unfinished ballast and no walkway ballast installed (GO 118)

6. WBWL: station 0-27; unpaved roadway containing obstacles in walkway switching lead; no walkway ballast installed (GO 118)
7. PA 19-21: station 182-199; no walkway ballast installed (GO 118)
8. RIP 01&02: station 185-199; jacking pads for car repair not installed; no walkway ballast installed (GO 118)
9. RCST: station 195-208; no walkway ballast installed (GO 118)
10. WBWL 1-4: station 174-200; no walkway ballast installed (GO 118)

In addition to the violations identified with portions of Berth 200 Yard deemed finished by POLA, there are several tracks that are not yet complete and therefore cannot be inspected for compliance. These tracks include without limitation the following:

1. MCF 2, IND 1&2: station 140-153; Avalon Team tracks
2. SPM1: station 245-300
3. SPM2: station 355-365; CP Banning and Transfer yard (CP Banning not in service)
4. SPM1-PAWL crossover switches T-19 –T-20
5. PAWL-SPM1 crossover switches T-21 & T-22
6. DS01, DS02 & DSRA: station 93-107
7. PARA East Lead: station 107-206
8. SPM1 Turnout: station 304
9. SPM2: Turnout: station 410; CP Goodwin control point

We are extremely concerned that POLA apparently intends for PHL, UP and BNSF to occupy and use the Berth 200 Yard, to the exclusion of Pier A Yard, prior to the completion of Berth 200 Yard and while significant construction activities are on-going (perhaps for as long as 90 days). The performance of this construction work in an extremely active railroad yard would expose the construction workers and PHL employees to safety hazards that will have to be addressed in accordance with applicable regulations (e.g., 40 C.F.R. §214 – Railroad Workplace Safety). This likely will result in as many as 2 – 5 tracks being removed from service immediately upon occupancy of the Yard by PHL if the move is on or about April 7, 2014. A reduction of yard capacity at Berth 200 Yard of this magnitude will cause a significant degradation of service to Port tenants and customers, and the resulting service deterioration could last for months. This is especially true given that, even when Berth 200 Yard is fully available, it will contain less than 90 percent of the track space currently available in Pier A Yard.

Another major issue that needs to be addressed prior to PHL's occupancy of Berth 200 Yard is storm water runoff in the area of the locomotive shop. As you know, the locomotive ready track next to the mechanical shop building is being constructed with only 210 feet of track pans on a track that exceeds 1,000 feet. This track normally will be full of locomotives awaiting assignment and is the primary locomotive fueling location for PHL (with fueling done by truck, using a service road built next to the track). The ready track, unlike the two roundhouse service tracks, is being completed simply in ballast and with no spill prevention infrastructure. We are concerned that the use of track mats for spill prevention purposes may be an inadequate means of containing hydrocarbons, especially during a storm water event. We are also concerned that the portion of the track that is being completed with track pans (as of plan version Delta 10) will still have no way to manage contaminated water once the pans overflow. It appears that these

facilities likely will violate applicable federal, state and local laws if used for locomotive fueling and servicing, as intended. Until the inadequacies are addressed, the replacement yard will be functionally incomplete.

The Letter states that, pursuant to Section 2.2 of the Operating Permit, POLA is providing PHL with 60-day notice that, as of April 7, 2014, Pier A Yard will be removed from service. Preliminarily, we note that, Section 2.2 requires that, by the date identified in the notice for removal of Pier A Yard from service, POLA shall have, "caused construction of the replacement yard ... described in Exhibit H substantially in accordance with the plans and specifications described in Exhibit H ... and made the Replacement Yard available to Operator for use by Operator in fulfilling its obligations hereunder...." Based on the status of the construction in Berth 200 Yard as of today, there is virtually no chance that the yard will be completed by April 7<sup>th</sup>.

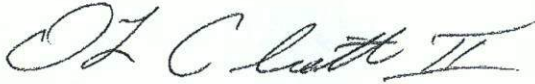
We also note that, under Section 2.2, the replacement yard has to be available to PHL in fulfilling its obligations under the Operating Permit. One of PHL's obligations under the Operating is the requirement that it, "comply, at its sole cost and expense, with all applicable federal, state and local laws, rules, regulations, permits and orders that relate to or govern ... [PHL's] activities in the Port Complex Area...." Operating Permit at Section 15.1. The operation of PHL of Berth 200 Yard with the non-compliances with the CA PUC orders identified above (among other potential non-compliances), and the inadequacies of the spill prevention infrastructure of certain tracks in the yard under applicable laws and spill prevention and storm water run-off plans, will put PHL in a position of being in breach of its obligations under the Operating Permit.

Moreover, under Section 1.5.1 of the Operating Permit, PHL has the right to inspect new Port Rail Facilities (as the Berth 200 Yard is designated in Section 2.2) and, "may reject the same only if Operator determines that the facilities are in an unsafe condition." PHL submits that the violations of CA PUC General Orders 26 and 118 identified above are, by definition, unsafe conditions that warrant rejection of the Berth 200 Yard at this time, as are the inadequacies of the design with respect to spill prevention and storm water runoff. Please be aware that PHL's right to inspect and reject new Port Rail Facilities will continue with respect to the Berth 200 Yard until construction is completed. All non-compliances and unsafe conditions must be remediated before PHL makes the transition to the replacement yard.

In light of the foregoing, PHL believes the Letter is not a valid notice for purposes of Section 2.2 of the Operating Permit. In addition, without regard to the adequacy of the Letter under Section 2.2, PHL is rejecting and will continue to reject Berth 200 Yard as new Port Rail Facilities, pursuant to Section 1.5.1 of the Operating Permit, until that facility is in compliance with all applicable federal, state and local laws, rules, regulations and orders that relate to safety (including without limitation CA PUC Orders 26 and 118)("Safety Rules"). PHL submits that, under the Operating Permit, it has no obligation to vacate Pier A Yard and occupy Berth 200 Yard until such time as (i) the construction of Berth 200 Yard is complete in all material respects, and (ii) there are no conditions in Berth 200 yard that constitute violations of Safety Rules or pose a threat to the environment.

Please be assured that PHL will cooperate with POLA to cause the transition of its yard operations from Pier A Yard to Berth 200 Yard as soon as practicable. To that end, PHL would like to conduct walk-throughs of the new yard, with representatives of the railroads, Port, contractors and government inspectors (CPUC and FRA), on March 19, March 26 and April 2, 2014 to monitor the progress of the construction and the remediation of non-compliances and unsafe conditions. I will call you later today to discuss the scheduling of the walk-throughs.

Very truly yours,



Otis L. Cliatt, II  
President

cc: BNSF Brian Aman - Director – Contracts & Joint Facilities  
BNSF Rollin Bredenberg – VP – Capacity Planning and Operations Research

UPRR Jeff Grinnell - Director Joint Facilities – Network Planning & Operations  
UPRR Shane Keller – Regional Vice President West

POLA Mike Christensen, P. E.  
POLA Ron Groves – P. E.