



**THE PORT
OF LOS ANGELES**
Executive Director's
Report to the

Board of Harbor Commissioners

DATE: JULY 17, 2013

FROM: CLEAN TRUCK PROGRAM

SUBJECT: TEMPORARY ORDER NO. _____ AND PERMANENT ORDER NO. _____ AMENDING PORT OF LOS ANGELES TARIFF NO. 4, SECTION TWO - ITEM 220 PENALTIES FOR VIOLATION AND SECTION TWENTY - ITEM 2040 CONCESSIONS AND TEMPORARY ACCESS PERMITS AND ITEM 2090 REMEDIES FOR VIOLATION OF CLEAN AIR ACTION PLAN PROVISIONS

SUMMARY:

Staff requests that the Board of Harbor Commissioners (Board) approve amendments to Items 220, 2040 and 2090 of the Port of Los Angeles (POLA) Tariff No. 4 (Tariff) to clarify that Item 220 criminal penalties do not apply to violations of Tariff Section 20, Clean Air Action Plan (CAAP). This is not a change in enforcement, as existing terminal operator permits and licensed motor carrier concession agreements already provide contractual remedies for tariff violations. However, these amendments are necessary in order to provide the public with express clarification within the Tariff itself, of the remedies scheme applicable to the CAAP.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners:

1. Approve the amendments to modify Items 220 and 2040 and to add a new Item 2090 in the Port of Los Angeles Tariff No. 4, subject to California Association of Port Authorities (CAPA) review and approval, and authorize the Executive Director to work with CAPA to secure this approval or proceed to take independent action in accordance with CAPA procedure (Transmittal 1);
2. Adopt a Temporary Order and a Permanent Order to amend Items 220 and 2040 and to add a new Item 2090 in the Port of Los Angeles Tariff No. 4 (Transmittals 2 and 3);
3. Authorize the Board Secretary to certify to the adoption of the Temporary Order by the Board of Harbor Commissioners and transmit the Temporary Order to the Chief Wharfinger for implementation and posting to the Port of Los Angeles website as regulated by the Federal Maritime Commission;

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4. Direct the Board Secretary to transmit to the City Council for approval of the Permanent Order (Transmittal 3) and Ordinance (Transmittal 4) approving and authorizing the amendments to the Port of Los Angeles Tariff No. 4 pursuant to City Charter 653(a); and
5. Authorize the Board Secretary to execute the Temporary Order, Permanent Order and Ordinance amending the Port of Los Angeles Tariff No. 4, and upon its publication, transmit the Order and Ordinance to the Chief Wharfinger for implementation of the tariff change and posting the amended Port of Los Angeles Tariff No. 4 to the City of Los Angeles Harbor Department's website as regulated by the Federal Maritime Commission.

DISCUSSION:

Background/Context - The Port of Los Angeles' (Port) Clean Truck Program (CTP) is one of the key components of the San Pedro Bay Ports Clean Air Action Plan (CAAP) which is focused on improving air quality at the Port by replacing older polluting heavy-duty trucks with cleaner heavy-duty trucks. This was accomplished in part by the POLA Tariff Section 20 provisions which required licensed motor carriers (LMCs) providing drayage services to have Concession Agreements with the Port, and for the LMCs' drayage trucks to comply with three successive bans from 2008 through 2012. Since the last ban fell into place on January 1, 2012, only heavy-duty trucks with 2007 EPA compliant engines or newer are allowed to service the Port terminals.

American Trucking Association Lawsuit - In July 2008, the American Trucking Association (ATA) filed a lawsuit against the City of Los Angeles (City) challenging several provisions within the Concession Agreement. Following a bench trial, the District Court issued a decision on August 26, 2010, in favor of the City holding that the entire Concession Agreement was enforceable. The ATA appealed the trial judgment first to the Ninth Circuit and then the U.S. Supreme Court, which issued its opinion on June 13, 2013. The Supreme Court's opinion expressed questions about whether the Port intended to use the Concession Agreement's contractual remedies or the Tariff's criminal penalties for violations of the CAAP and CTP.

Proposed Tariff Amendment Action - Staff recommends amendments to POLA Tariff Items 220, 2040 and 2090 to clarify for the public that the Port's scheme for enforcement of the CAAP and CTP requirements do not include criminal penalties, as follows:

- Item 220 - expressly states that its criminal penalties do not apply to Section 20 violations.
- Item 2040 - clarifies that the Concession Agreement contains all of the terms and conditions, including remedies, to be applied to LMCs.

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- Item 2090 - new tariff item is explicit about the various remedies to be applied for violations of the CTP:
 - Drayage Trucks, Drayage Truck Owners and Drayage Truck Operators that are non-compliant with Section 20 while on Port Property shall be denied access to Port Terminals.
 - Remedies against Terminal Operators failing to comply with Section 20 are set forth in their permits, leases or contractual agreements with the City.
 - Remedies against Licensed Motor Carriers failing to comply with Section 20 are set forth in their Concession Agreements or contractual agreements with the City.
 - In no event shall criminal penalties apply to violations of Section 20 of the Tariff.

After approval of the Permanent Order by the Board, the Order must be approved by Ordinance by the City Council pursuant to Charter Section 653(a).

ENVIRONMENTAL ASSESSMENT:

The proposed action is an Amendment to Port of Los Angeles Tariff No. 4 to clarify that the criminal penalties of Item 220 do not apply to violations of Section 20 - Clean Air Action Plan. As an administrative activity, the Director of Environmental Management has determined that the proposed action is administrative activity exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II, Section 2(f) of the Los Angeles City CEQA Guidelines.

ECONOMIC BENEFITS:

This Board action will have no employment impact.

FINANCIAL IMPACT:

The requested tariff changes are administrative in nature and have no financial impact.

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CITY ATTORNEY:

The Office of the City Attorney has prepared and approved as to form and legality, the
Tariff, Temporary and Permanent Orders and Ordinance.

TRANSMITTALS:

1. Tariff
2. Temporary Order
3. Permanent Order
4. Ordinance

FIS Approval: WR (initials)
CA Approval: gmk (initials)



CHRISTOPHER CANNON
Director of Environmental Management



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Deputy Executive Director



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APPROVED:



GERALDINE KNATZ, Ph.D.
Executive Director

AUTHOR: C. CANNON
BOARD MEETING: 7/25/2013

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