

DATE: OCTOBER 27, 2021

FROM: ENVIRONMENTAL MANAGEMENT

**SUBJECT: RESOLUTION NO. _____ - APPROVE PERMANENT ORDER
TO AMEND PORT OF LOS ANGELES TARIFF NO. 4, SECTION 20
CLEAN AIR ACTION PLAN, ITEM NOS. 2030 "CLEAN TRUCK FUND
RATE", 2035 "CLEAN TRUCK FUND", 2000 "DEFINITIONS", 2010
"DRAYAGE TRUCK ACCESS" AND 2041 "DRAYAGE TRUCK
COMPLIANCE"**

SUMMARY:

Staff requests approval of a Permanent Order to amend the Port of Los Angeles (POLA) Tariff No. 4 (Tariff), establishing new Item Nos. 2030 "Clean Truck Fund Rate" (CTF Rate) and 2035 "Clean Truck Fund" (CTF). The proposed Amendment will (i) authorize the CTF Rate at \$10 per twenty-foot equivalent unit (TEU) (\$20 if length is more than 20 feet) charged to cargo owners or their authorized Agent for loaded containers entering and exiting POLA terminals by drayage truck, (ii) create a full lifetime exemption for zero emission (ZE) trucks and a limited exemption for Low NO_x trucks, and (iii) make clear that the CTF Rate is established to be paid by the cargo owner or its authorized Agent and not Drayage Truck Operators (drivers). The collected CTF Rate revenues will be held in the CTF, to be used to assist in incentivizing the replacement of older drayage trucks. Staff additionally requests approval of the CTF Spending Plan in this Resolution, which includes the 100% allocation of the CTF toward ZE trucks and infrastructure, which will be implemented through specific incentive programs with details to be brought back for the Board of Harbor Commissioners (Board) consideration in the future. Finally, miscellaneous related CTF Rate Definitions in Item No. 2000, and references to updated state laws applicable to drayage trucks in Items Nos. 2010 and 2041 were revised to provide the most recent information. All Tariff Items would be effective on April 1, 2022.

RECOMMENDATIONS:

It is recommended that the Board of Harbor Commissioners (Board):

1. Find that the Director of Environmental Management has determined that the proposed action is statutorily and generally exempt from the requirements of the California Environmental Quality Act (CEQA) under Sections 15273, 15262, and 15061(b)(3) of the State CEQA Guidelines;

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2. Approve the Clean Truck Fund Rate Spending Plan in this Resolution;
3. Approve amendments to the Port of Los Angeles Tariff No. 4, revising Section 20 Clean Air Action Plan, by adding new Item Nos. 2030 “Clean Truck Fund Rate,” new Item No. 2035 “Clean Truck Fund,” and revised Item Nos. 2000 “Definitions,” 2010 “Drayage Truck Access,” and 2041 “Drayage Truck Compliance,” subject to the California Association of Port Authorities’ review and approval, and authorize the Executive Director to work with the California Association of Port Authorities to secure this approval or proceed to take independent action in accordance with the California Association of Port Authorities’ procedure;
4. Adopt Permanent Order No. _____ to amend the Port of Los Angeles Tariff No. 4, Section 20, Item Nos. 2030 “Clean Truck Fund Rate,” 2035 “Clean Truck Fund,” 2000 “Definitions,” 2010 “Drayage Truck Access,” and 2041 “Drayage Truck Compliance”;
5. Direct the Board Secretary to transmit to the City Council for approval of the Permanent Order and the Ordinance approving the amendments to the Port of Los Angeles Tariff No. 4 pursuant to City Charter 653(a);
6. Direct the Board Secretary to transmit to the City Clerk a Notice of Public Hearing for publication in accordance with the provisions of California Government Code sections 66018 and 6062a;
7. Authorize the Board Secretary to execute the Permanent Order and Ordinance amending the Port of Los Angeles Tariff No. 4 as stated above, and, upon its publication, transmit the Order and Ordinance to the Chief Wharfinger for implementation and posting to the Port of Los Angeles website; and
8. Adopt Resolution No. _____.

DISCUSSION:

Background and Context - Clean Air Action Plan and Clean Truck Program – The Clean Truck Program (CTP), one of the key components of the Clean Air Action Plan (CAAP), focuses on improving air quality in the ports of Los Angeles and Long Beach (Ports) by incentivizing the industry to replace older heavy-duty drayage trucks with lower emission heavy-duty drayage trucks. The CTP funded incentives from 2009-2011 Clean Truck Fees for voluntary early state law compliance two years prior to the California Air Resources Board (CARB) Drayage Truck Rule deadline, which required Environmental Protection Agency (EPA) 2007-compliant drayage trucks at all ports in the state on

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January 1, 2014.¹ Currently, 70% of the engines in the Ports' drayage fleet meet the 2010 EPA standard or better, as required in 2023, and 30% meet the 2007 EPA standard (which need replacement prior to 2023).

On November 2, 2017, the Ports adopted the 2017 CAAP Update, which includes further advancing the CTP to help the industry phase out older trucks and transition to the CAAP goal of ZE drayage trucks by 2035, which became a proposed state law requirement in the CARB Advanced Clean Fleet rulemaking process². As a result of the successful CTP efforts over the years, air emissions from trucks operating at the POLA have been reduced by 98% for diesel particulate matter (DPM), 83% for nitrogen oxides (NO_x), 92% for sulfur oxides (SO_x), and 16% for greenhouse gases (GHGs) compared to 2005.

Clean Truck Fund Rate – An important element in the 2017 CAAP Update's CTP is the establishment of a CTF Rate, which will charge a Rate to cargo owners or their authorized Agents on loaded containers hauled by drayage trucks at POLA terminals, with exemptions for ZE and Low NO_x trucks.

On March 9, 2020, at a joint meeting of the Ports, the Boards of Harbor Commissioners of Los Angeles and Long Beach (Boards) adopted Resolution Nos. 20-9613 and 20-9614 (Joint Resolution). For planning purposes, the Joint Resolution set the amount of the CTF Rate at \$10 per TEU to be collected pursuant to a future tariff amendment to be developed for Board consideration.

The CTF Rate collection mechanism will be provided by a competitively selected Rate collection agent, PortCheck LLC (PortCheck), who will develop a collection computer system, collect the CTF Rate from the cargo owners or their authorized Agents, and remit the CTF Rate revenues to the Harbor Department, pursuant to a rate collection vendor contract approved by the Board on May 20, 2021, which became effective on August 20, 2021, following Federal Maritime Commission review. Since the effective date, PortCheck has been working to develop the CTF Rate collection system, with an estimated completion date by March 2022. Since all cargo is processed at POLA terminals by terminal operators, the Tariff provides that terminal operators collect the CTF Rate, which may be administered by a third-party administrator. PortCheck performs the collection mechanism on their behalf for the Harbor Department under the PortCheck contract.

CTF Rate Development Roadmap Resolution – On June 17, 2021, the Board adopted Resolution No. 21-9846, to provide a clear and comprehensive roadmap (Roadmap Resolution) towards implementation of the CTF Rate as described in the 2017 CAAP Update and the Joint Resolution. The Roadmap Resolution directed staff to take all feasible actions to accelerate deployment of ZE trucks in accordance with the 2017 CAAP

¹ <https://ww2.arb.ca.gov/our-work/programs/drayage-trucks-seaports-railyards>

² <https://ww2.arb.ca.gov/resources/fact-sheets/advanced-clean-fleets-fact-sheet>

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Update's 2035 ZE drayage truck goal, and conduct robust stakeholder outreach to inform key design elements of the forthcoming CTF Rate Tariff Amendment before making any recommendations. The Roadmap Resolution further directed staff to develop the proposed Tariff Amendment to implement the CTF Rate for consideration by the Board before the end of 4Q 2021, based on the following key principles:

- Stakeholder input in development of tariff details;
- Coordination with Port of Long Beach (POLB) to achieve, as much as feasible, uniform implementation across the San Pedro Bay Port Complex;
- Achievement of zero emissions must be the overall goal, with incentives for acceleration of deployment of ZE trucks;
- Responsible treatment of the collected CTF Rate funds through expenditures consistent with the Tidelands Trust requirements and with the goals of the 2017 CAAP Update;
- Maximization of partnerships to accelerate ZE fleet transition that leverage other sources of funding, such as other public sources of funding and financing from the private sector;
- Exemptions based on federal and state clean truck regulations, with a permanent exemption for ZE trucks and an exemption to be developed following the Stakeholder Engagement process, for Low NO_x trucks, as defined by CARB in its Low NO_x Heavy-Duty Omnibus Regulation³, that are registered into the Port Drayage Truck Registry (PDTR), and put into service before the end of 2022;
- Integration with and contribution to a regional strategy for ZE supporting infrastructure;
- Policy advocacy directed at increasing funding and at reducing direct costs, including taxes and insurance, for ZE drayage trucks and supporting infrastructure;
- Consideration of the results from a survey of drayage truck drivers to assist with development of solutions to reduce the direct and indirect costs to drivers arising from fleet conversion; and
- Consideration of overall equity, including of economic and environmental outcomes and to drayage truck drivers and port communities.

CTF Rate Tariff Development Activities – Staff reports to the Board on its CTF Rate Tariff development activities below, as directed by the Board in the Roadmap Resolution:

- Stakeholder Engagement

The Roadmap Resolution directed staff to coordinate with the POLB in conducting a robust stakeholder outreach effort to solicit input from the public on the remaining

³ <https://ww2.arb.ca.gov/rulemaking/2020/hdomnibuslownox>

details to be finalized for the CTF Rate. The Ports hosted two public stakeholder outreach workshops in 2021 to solicit feedback and recommendations on the development of specific implementation details of the Ports' CTF Rate and CTF spending plan. Both workshops were open to the public, with the first meeting held on August 26, and the second meeting held on September 1, 2021. Both meetings included Spanish translation and were held virtually via Zoom, with opening comments by Ports' management and staff, and most of the time spent receiving public comments, with assistance of a facilitator.

The first meeting was focused on the discussion of policies related to Low NO_x trucks and a spending plan for the money collected through the CTF Rate. The second meeting focused on potential equity issues of the proposed CTF Rate, including the impacts to drayage truck drivers and communities surrounding the Ports. A total of approximately 160 comments were received, including post-workshop emails to the facilitator, who offered an opportunity to anyone who wanted to add more comments. A summary of the workshops was posted on the CAAP website at <https://cleanairactionplan.org/strategies/trucks/>. As a result of comments received at these workshops and written comments submitted, particularly comments regarding limiting exemptions on Low NO_x trucks and focusing funding on ZE trucks, staff developed the specific amendments to the Tariff that reflect these comments detailed below.

At an October 19, 2021 CAAP Stakeholder Implementation Meeting, staff presented a brief summary of the proposed Tariff and Rate Spending Plan to the public. The presentation can be found on the CAAP website at <https://cleanairactionplan.org/about-the-plan/stakeholder-advisory-group/>. At the October 21, 2021 Board meeting, Executive Director remarks included the POLA Tariff and Spending Plan elements described at the CAAP Stakeholder Meeting.

- CTF Rate Revenues Spending Plan

Staff considered CARB's proposed Advanced Clean Fleets regulation⁴ as well as stakeholder input from the workshops and CAAP Stakeholder meeting, and developed the following proposed general plan parameters for Board approval in this Resolution. All CTF Rate revenues shall be used exclusively to fund incentive programs for the replacement of port drayage trucks with ZE trucks serving the Ports and may include ZE infrastructure as needed. This Spending Plan shall be

⁴ The proposed Regulation will require all Class 7 and 8 drayage trucks operating at state intermodal seaports or railyards to be full zero-emissions by 2035. To achieve this target, all trucks that are added to the CARB state drayage truck registry shall be zero-emission starting in 2023. <https://ww2.arb.ca.gov/our-work/programs/advanced-clean-fleets> This concept, adopted as part of the proposed State's Mobile Source Strategy on October 28, 2021, will be considered by the CARB Board for adoption in 2022.

reviewed on an annual basis. The details of such ZE incentive programs and their administration, and ZE infrastructure projects will be developed and presented for Board consideration in the future. Funding allocations may change by Board resolution, for issues such as incentive fund expenditures, other sources' contributions to funding pools, stakeholder input, future state and federal regulations, and any other factors deemed appropriate to the Board.

- Leverage Other Public and Private Sources of Funding

The CTF Rate is expected to accumulate \$90 million a year collectively from both Ports in the initial years and that amount is expected to decrease each year as the fleet turns over to the cleaner trucks exempt from the Rate. Board members and Executive Director Gene Seroka have noted the Ports' CTF is only a small contribution to the challenge of funding the estimated \$10 billion or more needed to assist industry's transition to ZE of approximately 20,000 drayage trucks serving the Ports. POLA is currently in discussion with agencies, trucking associations and truck manufacturers on leveraging funds collected from the CTF Rate with existing/future regional, state, and federal funding program initiatives. POLA staff continues to meet with government officials to discuss additional funding opportunities for ZE trucks and infrastructure.

- CTF Rate Exemptions

Staff considered stakeholder input from the workshops and developed the proposed exemptions:

- ZE trucks are permanently exempt from the CTF Rate collection, as approved in the Joint Resolution.
- Low NO_x trucks purchased, registered in the PDTR and put into service by December 31, 2022, will receive exemption from the CTF Rate up through 2027. This is based on the Roadmap Resolution, with elimination of purchase date if PDTR and service dates occur in 2022, based on recent stakeholder input.

- Truck Driver Survey Results

Board members have made public comments expressing concern that staff seek to address direct effects of this new CTF Rate on drayage truck drivers. The POLA conducted a Truck Driver Survey (Survey) from June to July of 2021. The Survey was available in both English and Spanish. POLA received 407 completed Surveys. The POLA 2021 Port Truck Driver Survey results were presented publicly at the August 19, 2021 Board meeting. The average income from trucking after expenses is \$57,451, which translated to \$220.97 per day. Per turn income after expenses at 3.3 turns per day is \$66.74 per turn. If \$10 per a TEU (\$20/turn, as

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most containers are forty-foot equivalent unit) is passed down to truck drivers, it could cause potentially significant financial hardship for the drivers as it is approximately 30% of their daily average income from trucking after expenses. The proposed paragraph 1 of Tariff Item No. 2030 addresses the driver issue by providing the following language: "The CTF Rate shall be paid by the cargo owner, or its authorized Agent, which shall not include Drayage Truck Operators (drivers)."

- Overall Equity, including economic/environmental outcomes to drivers and port communities

The Ports held a public meeting on September 1, 2021, specifically to receive feedback from stakeholders on equity for drayage truck drivers and port communities. Input that POLA received included a focus on turnover to ZE trucks that provide drayage services throughout the disadvantaged communities surrounding the Ports; ensuring that small businesses and independent truck owner/operators have the opportunity to receive CTF Rate funds for purchasing cleaner trucks; ensuring that drivers are not burdened with the CTF Rate payment; and ensuring companies that are violating any labor regulations are unable to receive CTF Rate funding.

Proposed Tariff Amendment – Staff is requesting approval of an Amendment to Tariff No. 4 Section 20 Clean Air Action Plan, adding two new Item Nos. 2030 "Clean Truck Fund Rate" and 2035 "Clean Truck Fund." The proposed Amendment would authorize the CTF Rate of \$10 per twenty-foot equivalent unit (TEU) (\$20 if length is more than 20 feet) charged to cargo owners or their authorized Agents for loaded containers entering and exiting POLA terminals by truck, with exemptions for ZE trucks and Low NO_x trucks, described in detail below. These recommendations are developed with due consideration of the stakeholder input described above.

The CTF Rate is collected from cargo owners and assessed on loaded containers because the ultimate consumers of the cargo should absorb the true cost of transporting that cargo instead of imposing environmental impact externalities on communities surrounding trade corridors. Accordingly, the rate will be paid by beneficial cargo owners or their Agents and not paid by the drivers of the trucks transporting the cargo.

In addition, miscellaneous related CTF Rate Definitions in Item No. 2000, and references to updated state laws applicable to drayage trucks in Item Nos. 2010 and 2041 were revised to provide the most recent information.

All Tariff items (Transmittal 1) would be effective on April 1, 2022. The Board intends to reassess the CTF Rate annually, and may increase, decrease, or repeal the CTF Rate depending on technology feasibility, incentive fund expenditures, impacts to trade, and any other factors deemed appropriate to the Board.

Item No. 2030 - Clean Truck Fund Rate

- Effective Date: April 1, 2022
- Sunset Date: December 31, 2034
- Rate amount: \$10 per TEU (twenty-foot equivalent) (\$20 if length more than 20 feet)
- Assessed on Loaded cargo containers
- Moved by non-exempt truck in and out of POLA terminals
- Paid by the cargo owners or their authorized agents, which shall not include Drayage Truck Operators (drivers)
- Rate exemptions for Cargo:
 - Lifetime exemptions for ZE trucks that meet the definition of “Zero Emission Vehicle” in the CARB Advanced Clean Truck Regulation⁵
 - Exemption for Low NO_x Trucks:
 - Meets or exceeds the definition of “Low NO_x trucks” in the CARB Heavy-Duty Omnibus Regulation⁶
 - Registered in the PDTR and put into port service by December 31, 2022
 - Exemption duration through December 31, 2027
 - Enters or leaves the Ports by use of port on-dock rail facilities without use of a Drayage Truck
 - Moves between two Terminals within the Ports;
 - Is shipped under contract to the United States Transportation Command, United States Military or Department of Defense
 - Prototype or advanced technology demonstration trucks under a POLA contract, permit or license

Item No. 2035 – Clean Truck Fund

- The first Terminal Operator to handle any containerized merchandise subject to the Clean Truck Fee shall collect and remit the CTF to the POLA, which may be administered by a third-party administrator. The monies shall be used as set forth in a Resolution by the Board exclusively for programs for the replacement of Drayage Trucks with Zero-Emission and/or Low-NO_x Drayage Trucks serving the Ports, including fueling infrastructure.

⁵ <https://ww2.arb.ca.gov/rulemaking/2019/advancedcleantrucks>

⁶ <https://ww2.arb.ca.gov/rulemaking/2020/hdomnibuslownox>

Item No. 2000 – Definitions

- (New) “Agent” means an entity acting on cargo owner’s behalf under contract for arrangement of all or part of the movement of cargo between a Terminal and points of origin and destination. An “Agent” can be a shipping line, a rail carrier, a Licensed Motor Carrier or other agents and intermediaries, but in no event shall include or result in any Drayage Truck Operator being responsible for payment of the CTF Rate.
- (Revised) “CARB Truck and Bus Rule” definition added the current link to CARB’s webpage
- (Revised) “Drayage Trucks” definition changed the word “transgressing” to “transiting”
- (New) “Low NO_x Truck” was defined as “a Drayage Truck that that meets or exceeds the manufacturing standard of Low NO_x trucks under the Heavy-Duty Omnibus Regulation adopted by CARB⁵.”
- (New) “Zero Emission Truck” was defined as “a Drayage Truck that meets the definition of “Zero Emission Vehicle” in the CARB Advanced Clean Truck Regulation: “an on-road vehicle with a drivetrain that produces zero exhaust emission of any criteria pollutant (or precursor pollutant) or greenhouse gas under any possible operational modes or conditions⁷.”

(Revised) Item 2010 – Drayage Truck Access and Item 2041 – Drayage Truck Compliance

- The list of State emissions laws for Drayage Trucks was modified in these items to add “and/or the CARB Advanced Clean Fleet Regulation following adoption⁸.”

Required Tariff Approvals – A separate Tariff action recommends Board adoption of a Temporary Order within its Los Angeles City Charter authority to approve changes to Tariff No. 4, to be effective for a period not to exceed 90 days. This Tariff action for Board and City Council adoption of a Permanent Order (Transmittal2) and Ordinance (Transmittal 3) are required under the Charter to make changes to POLA Tariff No. 4 beyond the Temporary Order’s 90-day effective period.

Commencement of CTF Rate Collection – The CTF Rate collection shall commence following the legal effectiveness of this Tariff in accordance with applicable laws, and the completion of a fee collection system.

⁷ <https://ww3.arb.ca.gov/regact/2019/act2019/fro2.pdf>

⁸ <https://ww2.arb.ca.gov/our-work/programs/advanced-clean-fleets>

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ENVIRONMENTAL ASSESSMENT:

The proposed action is the approval of a Permanent Order to amend POLA Tariff No. 4, Section 20, which is an activity involving:

- The establishment of a rate by a public agency which the public agency finds is for the purpose of purchasing equipment;
- A planning study for possible future action which the Board has not approved, adopted, or funded and does not require the preparation of an EIR or Negative Declaration but does require consideration of environmental factors; and
- An activity where it can be seen with certainty that there is no possibility that the approval may have a significant effect on the environment.

Therefore, the Director of Environmental Management has determined that the proposed action is statutorily and generally exempt from the requirements of CEQA in accordance with Sections 15273, 15262, and 15061(b)(3) of the State CEQA Guidelines.

FINANCIAL IMPACT:

Approval of the proposed Order would amend the Tariff to establish the Clean Truck Fund and a CTF Rate of \$10 per TEU for loaded containers entering and exiting POLA terminals by drayage truck, with exemptions for ZE trucks and Low NOx trucks. The CTF Rate will be collected by vendor collection agent PortCheck starting April 1, 2022. PortCheck will retain the amount of its approved invoice charges for their services, and remit the remaining CTF Rate collections to the Harbor Department on a monthly basis. The money collected each month will be made available to fund Board-approved incentive programs for the purchase of ZE trucks. A joint staff report to the Boards at the March 20, 2020 meeting presented that the CTF Rate could initially generate up to \$90 million annually (~\$45 million per port annually).

If the proposed Order is approved, staff will commence a Request for Proposal process to select a third party administrator that will assist with the design and implementation of programs to incentivize the purchase of ZE trucks. Any action related to the selection of a third party administrator or the creation of an incentive program using collected CTF Rate revenues will be brought forth for the Board's consideration at a later date.

CITY ATTORNEY

The Office of the City Attorney has reviewed and approved the proposed Tariff, Order and Ordinance as to form and legality.

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TRANSMITTALS:

- 1. Tariff No. 4 Section 20, Item Nos. 2030, 2035, 2000, 2010 and 2041(changes in red)
- 2. Permanent Order
- 3. Ordinance

FIS Approval: *MyL*
 CA Approval: *JC*



CHRISTOPHER CANNON
 Director of Environmental Management

Michael DiBernardo

MICHAEL DIBERNARDO
 Deputy Executive Director

APPROVED:



EUGENE D. SEROKA
 Executive Director

CC/yo
 Author: A. Coluso

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