

# 100 Questions about the Long Beach Port Trucks Scheme

Submitted Feb. 19th, 2008 to Long Beach Harbor Commissioners



1. During the press conference for the release of the draft Clean Air Action Plan in 2006, then president of the Board of Harbor Commissioners for the Port of Long Beach, James Hankla, talked about the promise of “effective collaboration and partnership between the nation’s two most successful ports.” Why did Long Beach unilaterally broken off from a joint project with the Port of Los Angeles?
2. Does corporate pressure curb pollution, or does taking bold action in response to environmentalist, public health and community concerns?
3. If the goal of the Clean Trucks Program is to meet 50% alternative fuel trucks, and this goal is the necessary component to meet the emissions reductions goals in the CAAP, then why doesn't the plan create a guarantee for meeting that goal? A 100% container fee exemption for diesel trucks purchased between now and October 1 will not result in 50% alternative fuel trucks.
4. How will driver rates increase through the POLB scheme, as economist John Husing argued must occur?
5. If every single driver now must add truck payments to his or her set of expenses – and they still have no means for increasing their own revenue – won’t this be a significant net loss for port drivers?
6. If port trucking market is disastrously fragmented now, what will it look like when drivers will become significantly poorer under the proposed system?
7. Does the Port plan include a weekly prayer session that the broken port trucking market will fix itself?
8. Why would drivers bind themselves to a seven-year lease knowing that the truck they invest in might be banned from the Port in order to meet update environmental standards by the time they’ve paid it off?
9. Or are you saying the plan's environmental standards will be so weak that 2007 trucks will be allowed in the ports after 2015?
10. The details of the truck leasing scheme are very vague. With whom would the driver’s lease be?
11. With the Port? With the LMC? With the truck manufacturer? With the leasing company? With the financing company?
12. What will the terms of the lease be?

13. Will the truck be repossessed if the lease is not paid or the driver is unable to work?
14. What happens to any equity the driver has built up in the asset?
15. Is the lease transferable?
16. What makes you think that a driver would agree to a seven-year lease?
17. Given the thin margins for drivers, and the imbalanced reliance that drivers have on LMCs for work, doesn't this create a system of desperate insecurity for drivers, where they will be pressured to take any and all work to meet truck payments?
18. Isn't seven years a significantly longer period than most established national trucking companies turnover their fleets, and longer also than the proposed five-year concession agreements?
19. Is the Port concerned about the legal implications of a concessions agreement? Many of the Port's public comments about the employee/sustainability provisions had to do with fear of lawsuits. But many trucking companies and associations threatened legal action simply over the fact of a concession agreement, and the ATA said it would sue over the total plan.
20. Do industry lobbyists' threats of lawsuits trump your conscience and clean-air mandate?
21. The inefficiencies of the current drayage system are well-known. Chaotic queuing at the Ports, inefficient implementation of technology, failure to take advantage of "slip-seating," and other inefficiencies are endemic. How will the Port's scheme do anything to improve efficiency?
22. Democratic Presidential front-runners Hilary Clinton and Barack Obama wrote to Long Beach Mayor Foster urging him and this commission to support the strongest Clean Trucks Program in order to be successful in green growth initiatives that create good jobs. Why did the POLB take a giant step backwards?
23. Is the Port serious that the vote today is on a carefully deliberated, legally-sound policy that it has been working on for a year and a half?
24. So why did it take this long to produce a half-baked plan?
25. Why does the Port claim that drivers will see reduced costs because of increased fuel efficiency of newer trucks? A majority of drivers (over 8,500, according to figures from the Ports) have trucks that fall between model years 1994-2003; these are trucks that would be retrofitted, not replaced. Since retrofit devices make these vehicles less fuel efficient, won't most drivers be paying even more for fuel?

26. Because drivers are still treated poorly and not offered any substantial worker's rights or benefits under POLB's scheme, isn't the seven-year contract agreement a modern day form of indentured servitude on a largely low-income Latino workforce?
27. Does the Port believe that it is feasible to have the two Ports operating as a single Port complex (as the drayage industry views it) with two different sets of rules? Or is this an attempt by the POLB to return to the days of competition against POLA, making this simply an attempt to be friendlier to industry, and steal customers and market share from POLA?
28. What makes the Port think that port drivers will haul cargo out of Long Beach at all, if Los Angeles sticks with the real Clean Trucks Program that will rightfully require the profitable industry to take responsibility for a modernized, green fleet?
29. What happens if a driver falls behind in payments, or leaves the drayage industry? This could be for many reasons including slowdown in trade, an unavoidable illness, he/she is moving from the area, or simple favoritism of LMC dispatchers in assigning work.
30. Who is ultimately responsible for the maintenance of the trucks, LMCs or individual drivers?
31. Isn't the allowance of independent contractors in this entire scheme a huge loophole to avoid any true accountability? Independent contractors are essentially subcontractors to the LMC concessionaire, given that they have separate contracts.
32. How can the Port enforce concessionaire conditions on someone with whom they have no direct relationship?
33. Many independent contractors themselves contract with additional drivers below them. How can the Port assure no dilution in oversight and accountability given the many layers of contracting?
34. How many inspectors is the Port prepared to hire to ensure that LMCs are "ensuring" compliance with regulations that have been ignored for years?
35. Didn't John Husing say that CHP is conducting BIT inspections of LMC yards only every 50 months?
36. Doesn't the POLB scheme assume a level of existing compliance completely belied by the facts?
37. Given how important truck maintenance is – with improperly-maintained trucks polluting up to 50% more than properly-maintained trucks – truck maintenance becomes key. What is the Port's plan to ensure that maintenance happens as it should?
38. What happens if a truck is found to have been improperly maintained?

39. Is there a penalty for the LMC, or just for the driver?
40. If the driver is to incur the cost of maintenance, how is he/she going to pay for this on race-to-the-bottom rates and no benefits?
41. Is the driver going to be forced to make a decision between putting food on the table or ensuring maintenance of the truck?
42. Why would drivers be enticed to take the up-front grant, given the widespread dissatisfaction with the Gateway program?
43. Could the LMC have its concession agreement suspended for improper maintenance?
44. Can the LMC simply deny its driver any work until the driver fixes the truck due to improper maintenance?
45. If the latter, then isn't the Port of Long Beach truck maintenance scheme ultimately toothless?
46. What is the nature of the "prepaid maintenance" program touted by the Port?
47. Is this program going to cover all truck-related expenses for the life of the truck? Or just for an initial period?
48. Also, will it cover repairs as well as maintenance, or just maintenance?
49. What happens if a tire blows out, or needs to be regrooved?
50. What happens if a transmission needs a tune-up?
51. As has been well-documented, drivers handle most repairs and maintenance themselves, or with curbside mechanics. Newer trucks require greater expertise, there are fewer places where such work can be done, and the work is significantly more expensive. If drivers can't afford costly repairs, won't the equipment and technology that keeps a truck clean be useless?
52. Don't the above mentioned issues also further decrease the safety of trucks on the highways and residential streets of Southern California?
53. If the maintenance plan simply covers an initial period of time (say, two years), then isn't the Port setting up a sleeper crisis? Under this scenario, drivers would be fine until the warranty expires (about the time when costly repairs and maintenance rear their head), at which point their costs would balloon.
54. Isn't this very similar to the current crisis stemming from sub-prime mortgages?

55. Can you rename this the “Port Gives Industry a Lobster Dinner and the Community Gets Chopped Liver” plan?
56. Who is going to clean up the above-mentioned that mess, when this slate of Harbor Commissioners is gone?
57. How exactly does the Port hope to “ensure all trucks operating under the Concessionaire’s authority are in compliance with on-street restrictions and travel only in specified truck routes established by local municipalities?”
58. Doesn’t this statement simply uphold the status quo rule? This barely resembles the original CTP proposal from 2006.
59. The current air quality and public health disaster the result of the failure of current regulations. How will putting window dressing on a failed system improve things?
60. What is the Port’s expectation regarding the health care requirement, if all that is required is that the LMCs “offer” health care to drivers?
61. Is there a requirement that the offer for healthcare be affordable?
62. Will there be a requirement for a minimum level of drivers to be on a healthcare plan in order to conduct business at the ports?
63. Will it be required that the healthcare coverage be of a minimum level?
64. Isn’t the option to “offer” health care able to be easily evaded by trucking companies by offering a plan that is too expensive for drivers to ever accept?
65. What exactly is the plan for health insurance? How does the port propose that LMC’s “prove” it is available?
66. Would proof of a spouse’s employment by an employer offering family coverage suffice? How about MediCal?
67. Since many drivers and/or their family members are eligible for MediCal or Healthy Families, wouldn’t proof of poverty-level net income “prove” that health insurance is available to a driver? Isn’t this Walmart’s method of “offering” health insurance to its employees?
68. If the health insurance standard is focused on having the LMCs sponsor their own plan, how does the port propose to enforce this requirement without being pre-empted under ERISA?

69. If the POLB is going to set up its own fund, how much are drivers going to be expected to pay?
70. Will taxpayers be subsidizing health insurance for drivers who move freight for Target, WalMart and Home Depot?
71. Why are truck drivers not guaranteed health insurance? By not guaranteeing insurance, or by only providing an opportunity for low-income drivers to purchase insurance, you are perpetuating status quo and forcing taxpayers to continue picking up the health care costs for drivers and their families.
72. What about drivers who are still paying off their current trucks? Under this plan, they receive no payment for the scrappage. This would mean that many drivers will be forced to continue paying for trucks that no longer even exist, in addition to new trucks they are forced to purchase.
73. Won't the fact that drivers who are still paying off their current soon-to-be scrapped trucks force them to leave Port operations altogether, simply displacing the problem and leading to an increase in regional emissions as older dirty diesel trucks will remain on our roads and highways?
74. Why is the Port claiming an 80% subsidy for new truck purchases when the numbers provided by the Port indicate a much lower level of subsidy?
75. How can the Port ask LMCs to submit lists of "their" drivers and the "contractor's trucks?" Isn't the essence of the independent contractor status that they may work for multiple companies at once?
76. Isn't this simply enshrining the true nature of the relationship – an employment one – with the bogus label of "independent contractor?"
77. The concession agreement specifies that LMCs will ensure that all trucks and drivers meet maintenance, safety and security standards. But for the Ports to mandate this, the LMC must have a significant degree of control and direction over the trucks and workers. The hallmark of the independent contractor status is that LMCs lack that very control and direction. Does this mean that the POLB scheme is a disingenuous way to enshrine a bogus independent contractor system?
78. Or does this mean that it is blatantly unenforceable?
79. Will concession agreements be transferable?
80. Can an LMC subcontract to a non-concession LMC under its concession authority?
81. If so, doesn't this evade most accountability?

82. If no, why does the proposed agreement not prohibit subcontracting or transferring authority?
83. How will this plan be enforced? Nowhere does it say that companies will lose their concession or ability to do business at the Port if they do not comply with all the requirements.
84. Will LMCs be responsible for paying drivers' parking tickets? If not, what is the point of the parking section?
85. How are LMCs supposed to "ensure compliance"?
86. Why include a statement of preference on off-street parking?
87. How will that get trucks off the streets of Long Beach?
88. What is the point of the Workers' Compensation section? Will LMCs be required to pay for their independent contractors?
89. If not, isn't this just an unfunded mandate that the drivers have to pay?
90. Will drivers be allowed to contract themselves to more than one concession LMC at a time?
91. If so, how will any of the standards be enforced against LMCs?
92. If a driver's truck is non-compliant, which LMC is responsible?
93. If they're not allowed to contract to multiple LMCs, then in what sense are they independent at all?
94. The concession agreement specifies that LMCs will ensure that all trucks and drivers meet maintenance, safety and security standards. But for the Port to mandate this, the LMC must have a significant degree of control and direction over the trucks and workers. The hallmark of the independent contractor status is that LMCs lack that very control and direction. Does this mean that the POLB scheme is a disingenuous way to enshrine a bogus independent contractor system, or does this mean that it is blatantly unenforceable?
95. As long as new trucks are purchased before October 1, 2008, shippers will be exempted from the Trucks Fee. This creates an incentive for LMCs to buy the cheapest available new trucks as quickly as possible. Given the price difference between diesel and alternative fueled trucks, doesn't this create an incentive for purchasing diesel?
96. With no changes in the economic structure of the industry, and with individual drivers held responsible for their expensive trucks, how does it make sense to expect drivers to

suddenly have more money to invest in trucks, along with their expensive repair and maintenance that will inevitably be incurred with the new technology trucks?

97. If POLB proposes to provide “one-time financial assistance,” and if the industry is supposed to self-finance future investments, what exactly is supposed to happen?
98. In light of industry threats to kill the most dramatic diesel emissions program in history, shouldn't Long Beach officials be taking leadership, not cover?
99. Isn't this recklessness, masquerading as readiness?
100. Given the 99 questions above, this is not a workable scheme. In rejecting the real Clean Trucks Program, aren't Bob Foster's own commissioners assuring what the mayor himself has long argued must end? Kids in Long Beach are suffering from asthma and respiratory illness all so people in Kansas can buy a cheaper TV set.