



INTERMODAL ASSOCIATION OF NORTH AMERICA

Reprinted from June 2009 *Intermodal Insights*. © 2009 Intermodal Association of North America. All rights reserved.

Truck Plan Elements Enjoined by Judge

Following a federal judge's enjoining of key elements of the Clean Trucks Program concession plans of the ports of Los Angeles and Long Beach, the San Pedro Bay mega-containerports are continuing to move forward with program initiatives not impacted by the ruling. Imposition of related container fees has been delayed until at least July 2010.

In an April 29 final order, Judge Christina A. Snyder of the U.S. District Court for the Central District of California, following her tentative ruling of April 27, immediately enjoined several principal elements of the concession plans. Snyder's ruling came after a March 20 decision by the U.S. Court of Appeals for the Ninth Circuit, in legal action led by the American Trucking Associations, that reversed and remanded the lower court's earlier ruling to allow the plans to go forward.

Snyder ruled that several of the concession requirements could illegally regulate interstate commerce at the two ports.

Pending a full trial, set to begin Dec. 15, the latest ruling puts on hold numerous sections of the program, including collection of truck concession program fees, concessionaire financial capability requirements, preferential hiring considerations, off-street parking requirements and, specific to the Port of Los Angeles, an employee driver mandate banning independent owner-operators.

An April 29 press release from the Port of Los Angeles, headlined "Heart of Los Angeles' Clean Truck Program Moving Forward," said Snyder's ruling "leaves in place the centerpiece" of the program, "allowing the Port of Los Angeles to ban dirty diesel trucks and clean up air pollution from the surrounding port communities while putting on hold disputed sections of the program."

Dr. Geraldine Knatz, executive director of the Port of Los Angeles, said, "We are committed to implementing the most sustainable program possible. Our complete program has already cut truck pollution drastically and it ensures that today's clean trucks will be replaced by even cleaner trucks in years to come. We will make that case in trial later this year."

Port of Long Beach officials responded to the latest ruling with a notice to "stakeholders and interested persons," stating that the federal court's decision allows the port to continue to use the concession agreement to implement and manage the program, although the notice conceded that the decision does deem that the port could not enforce "certain individual parts" of the agreement.

Meanwhile, Curtis Whalen, executive director of the Intermodal Motor Carrier Conference of the American Trucking Associations, said, "We welcome Judge Snyder's final decision."

Nonetheless, ATA, on May 14, returned to the U.S. Court of Appeals for the Ninth Circuit for broader relief. In its additional appellate filing, ATA contended that Snyder committed multiple errors of law and thus abused discretion in failing to preliminarily enjoin the concession agreements as a whole.