

District Court Directed to Halt Parts of L.A./Long Beach Clean Trucks Plan

A broad five-year plan to reduce cargo truck pollution at the nation's biggest port complex took a hit recently when the U.S. Court of Appeals for the Ninth Circuit ruled that certain aspects of the plan should be halted. The court agreed with the American Trucking Associations that a number of provisions in the Clean Trucks Plan adopted by the ports of Los Angeles and Long Beach have more to do with economic and environmental concerns than with motor vehicle safety and are therefore likely to violate federal law, which preempts most local government regulation of motor carrier prices, routes and service.

The CTP is designed to replace older drayage trucks with newer, cleaner ones as part of an effort to reduce air pollution related to port activities. Several of the plan's provisions took effect Oct. 1, 2008, including a requirement that only licensed motor carriers with port-approved concessions may access shipping terminals at these two ports. The port of Los Angeles imposed an additional requirement that seeks to phase out all independent drayage truck owner-operators over five years. The neighboring facilities have also banned (a) model year 1988 and older trucks as of Oct. 1, 2008, (b) model year 1989-1993 trucks and model year 1994-2003 trucks that have not been retrofitted with clean engines as of Jan. 1, 2010, and (b) model year 2006 and prior trucks as of Jan. 1, 2012. Another aspect of the CTP, the assessment of a \$70 per 40-foot container fee, was imposed as of Feb. 18.

Last July the ATA filed suit in federal court to challenge the CTP's limitation on port access to only those trucking companies that have entered into port-approved concession contracts. The district court denied the ATA's request to temporarily halt this concession requirement, stating among other things that the association had failed to demonstrate that its members would be irreparably harmed in the absence of an injunction. The appeals court disagreed, stating that the concession agreements are likely unconstitutional and that motor carriers would be harmed regardless of whether or not they sign such an agreement. If a carrier does not participate "it is likely that all or part of the carrier's business will evaporate," the court said, and if it does it "will be forced to incur large costs which, if it manages to survive those, will disrupt and change the whole nature of its business in ways that most likely cannot be compensated with damages alone."

The appeals court remanded the case to the district court to decide the validity of each concession agreement provision, determine whether those provisions are separable from the remainder of each agreement and issue an appropriate preliminary injunction "as quickly as possible." Supporters of the CTP pointed out that this ruling does not affect the clean truck fee or the phased-in bans of older model trucks.