



OFFICE OF THE
BRITISH COLUMBIA CONTAINER
TRUCKING COMMISSIONER

Off-Dock Drayage in the Lower Mainland Recommendation Report





OFFICE OF THE
BRITISH COLUMBIA CONTAINER
TRUCKING COMMISSIONER

1085 Cambie Street, Vancouver BC V6B 5L7

info@obcctc.ca

obcctc.ca

604-660-6051

May 2021

Table of Contents

Executive Summary.....	1
Summary of Recommendations.....	1
Introduction	4
Background	4
Cascadia <i>Off-Dock Drayage Insights</i> Report.....	5
Industry Consultation.....	5
Submission Summary.....	6
Website Submission Summary.....	6
Scope of the <i>Container Trucking Act and Regulation</i>	10
Rates	15
Enforcement	16
Conclusion.....	18

Executive Summary

The recommendations in this report are provided in response to a request from the Minister of Transportation and Infrastructure (the “Minister”) to examine opportunities to make targeted adjustments to the rates and policy implemented by the Container Trucking Commissioner (the “Commissioner”), and the *Container Trucking Regulation* (the “*Regulation*”) to ensure fair and equitable working conditions that support a stable, efficient and competitive Lower Mainland container trucking (a.k.a. drayage) sector. This report specifically addresses the issue of off-dock drayage activity in the Lower Mainland.

The report focuses on recommendations across three areas --regulatory scope, rates, and enforcement. The recommendations are made in response to and in consideration of the findings of the *Off-Dock Drayage Insights* report and supplemental submissions provided by interested stakeholders. The recommendations are extensive in scope and, if implemented, will result in substantial change for the betterment of the drivers the legislative scheme governing container trucking services was introduced to protect. As will be clear from a review of this report, some of the recommendations are for the Office of the BC Container Trucking Commissioner (“OBCCTC”) and some are for the Ministry of Transportation and Infrastructure.

Summary of Recommendations

Recommendation 1

Amend the CTS Licence to apply its terms and conditions to any company that is affiliated with a licensee and moving containers that are currently captured by the *Act* and *Regulation*. Amend the CTS Licence to require licensees to make available upon request any contracts between the licensee and entities carrying out CTS on their behalf, and that those contracts demonstrate that truckers performing CTS on behalf of licensees are being paid the required rate.

The current scope of the *Container Trucking Act* (the “*Act*”) and *Regulation* is clear. The legislative scheme is intended to regulate the on- and off-dock transportation of marine containers that transit through the Port of Vancouver container terminals by truck. Detailed explanations about which containers and container movements attract the Commissioner’s rates have been provided in decisions and bulletins of the Commissioner.

Off-dock issues canvased in the *Off-Dock Drayage Insights* report have arisen, in part, because companies have adapted their practices to avoid the existing regulatory requirements, not because the *Act* or *Regulation* are unclear or their applicability has not been properly communicated.

It is now clear that drivers at licenced companies are continuing to lose work to lower paid drivers at unlicensed companies, undermining the intent of the Joint Action Plan and destabilizing the industry.¹

¹ Off-Dock Drayage Insights Report, page 15.

Increasingly, CTS Licence holders are setting up secondary, unlicensed transport operations in order to complete off-dock drayage trips at lower rates.

Amending the licence to require unlicensed affiliate companies and companies that contract with licensees to perform CTS to pay the required rates, will not jeopardize the stability of the sector and, while I support efficiency and competition, I do not believe that either will be sacrificed if drivers at unlicensed companies are paid the required rates for those container moves which are currently contemplated by the *Act* and *Regulation*. Truck drivers are entitled to fair remuneration and any situation where driver remuneration is undercut only gives rise to greater instability in the industry.

Recommendation 2

Assign truck tags to licences only for the purpose of identifying trucks that require access to a marine container terminal.

The role of truck tags in the regulatory scheme must be considered in this context. The use of untagged trucks for off-dock work continues to negatively impact the audit and enforcement capabilities of the OBCCTC because of the difficulty in tracking untagged container trucking service activity. However, tagging all trucks performing container trucking services would dilute the available amount of on-dock work for existing drivers of tagged trucks at licenced companies and could increase congestion/wait times at the terminals.

Currently, the OBCCTC is administering a truck tag program that is intended to account for on- and off-dock activity but utilizes Vancouver Fraser Port Authority (“VFPA”) data that only accounts for on-dock activity, with the result that adjustments have to be made to account for this. The VFPA’s focus should remain on terminal access and truck performance issues. As the truck tag system is one that is designed to account for on-dock activity, it should not be expanded to address off-dock issues, nor would its expansion be required. The primary purpose of the regulatory scheme is to ensure compliance with rate payment and labour practice requirements. A truck tag is not necessarily required for the OBCCTC to track driver pay.

Recommendation 3

Amend section 25 of the *Regulation* to require licensees to provide a security in an amount that is linked to the number of trucks, identified under licence, that perform container trucking services.

The size of the required security associated with the licence is based upon the size of a licensee’s fleet, which is assumed to be, but is not necessarily, reflected in the number of truck tags issued to the licensee. It is important that the size of the security remains tied to the size of a licensee’s container trucking services fleet. If truck tags are only assigned to trucks performing on-dock container trucking services, section 25 of the *Regulation* must be amended to require licensees to provide a security in an amount that is linked to the number of trucks, identified under licence, that perform container trucking services rather than the number of truck tags assigned to the licence.

Recommendation 4

Tie OBCCTC funding to the number of trucks, identified under licence, that perform container trucking services.

The OBCCTC is funded by a portion of the Truck Licensing System (“TLS”) fees collected by the VFPA and is allocated money on a “per truck tag” basis.

If the OBCCTC amends the licence to more comprehensively regulate off-dock activity but the number of truck tags assigned to licensees is maintained (or decreased), then the current funding model will have to be amended to ensure that the OBCCTC’s audit and enforcement capacity remains equal to the task. Rather than tie the amount of OBCCTC funding to the number of truck tags, it is recommended that OBCCTC funding, like the security, be tied to the number of trucks identified under licence that perform container trucking services.

Recommendation 5

Amend the Rate Order to eliminate trip rates and the Positioning Movement Rate (“PMR”) and introduce comparable minimum hourly rates for all employees and Independent Operators.

A two-tiered rate structure (trip/hourly) continues to present opportunities for rate undercutting and while compliance issues would not be completely resolved by the introduction of an industry-wide hourly pay model, I believe compliance would be greatly increased if driver pay structures were simplified, which would, in turn, result in greater fairness in driver remuneration. The introduction of an industry-wide hourly pay model could also increase the competitiveness of the sector by resolving terminal wait time concerns, increasing efficiency in licensee dispatch and enhancing the audit and enforcement capabilities of the OBCCTC.

Recommendation 6

Amend the CTS Licence to require that licensees install on each truck a third-party certified electronic logging device and make available to the OBCCTC all data generated by the electronic logging device (“ELD”) upon request, and require affiliates to do the same, and include penalties for withholding and altering this information.

The effectiveness of the Commissioner’s audit and enforcement capabilities is central to the success of the legislative scheme. The 2020 CTS Licence includes conditions requiring licensees to list all trucks and drivers performing container trucking services. That alone, however, will not be sufficient to enforce off-dock rate payment. The OBCCTC cannot enforce rate payment if it is not aware of which trucks are performing container trucking services.

I recommend that in conjunction with the introduction of an industry-wide hourly pay model, it be made a requirement of licence that all licensees install on each truck belonging to a licensee or its affiliate a third-party certified ELD in order to track all container trucking services and enforce the required rates. The data generated by an ELD should be kept by licensees and made available to the OBCCTC during audit and upon request. The CTS Licence should also be amended to include penalties for withholding and altering this information.

Introduction

On September 16, 2020, the Minister released a report (*Off-Dock Drayage Insights*, Cascadia Partners, September 2020) that examined off-dock container movements in the Lower Mainland for the purpose of informing future policy development. The Minister also announced that the Commissioner would be undertaking further consultation with the container trucking sector on opportunities to make targeted adjustments to the Commissioner's rates, policy and the *Regulation* to "ensure fair and equitable working conditions that support a stable, efficient and competitive Lower Mainland container trucking sector."

This report is provided in response. It focuses on recommendations across three areas: regulatory scope, rates, and enforcement.

On September 23, 2020, the Commissioner issued a call for submissions seeking input from stakeholders on the three policy areas noted above with consideration of the findings of the *Off-Dock Drayage Insights* report.

Background

Off-dock drayage is not a new concept. In the 2014 Joint Action Plan, the federal and provincial governments committed to put in place a new mechanism to ensure that off-dock trips (including within a property or between properties) were remunerated consistent with the revised regulated rates and to expand the scope of the audit program to include union and non-union drivers and "off-dock" movements.

In response, the *Act* and *Regulation* provided for off-dock rates and established a licensing program that required all licensees performing container trucking services (on- and off-dock) to do so using tagged trucks. Truck tags allocated to licences are assigned to approved trucks, allowing those trucks to access container terminals. A GPS unit is installed on each tagged truck; historically, the GPS unit was used to measure the truck's on- and off-dock movements but GPS scorecards now account for on-dock data only. The metrics generated by the GPS units are summarized on a VFPA drayage score card which the Commissioner uses in the application of the OBCCTC CTS Licence Truck Tag Management Policy. Each audit conducted by the OBCCTC examines driver pay for on- and off-dock container movements and all policies of the Commissioner have accounted for off-dock container movements.

Why then have drivers been raising concerns about off-dock container movements and, specifically, driver pay for those movements? The answer lies in the structure of the regulatory scheme. The requirements of the *Act* and *Regulation* are based upon the premise that off-dock moves occur in support of on-dock moves and that each drayage company moving containers to and from container terminals perform both types of moves using tagged trucks. On that basis, the *Act* and *Regulation* stipulate that any company requiring access to a marine terminal to conduct drayage in the Lower Mainland requires a licence issued by the Commissioner (CTS Licence) and an Access Agreement issued by the VFPA. In turn, the CTS Licence requires its holder to pay its drivers the Commissioner's on and off-dock rates for all container trucking services which must be performed using a tagged truck.

In response, drivers at unlicensed companies are now conducting the off-dock moves made in support of on-dock moves. There are several reasons why this has occurred, but the Commissioner's regulation of rates is certainly one of them. By using untagged trucks at unlicensed companies (many of which are owned by the same people who own licensed companies) to perform off-dock container moves, companies operate outside the regulatory structure, pay off-dock rates that are lower than the Commissioner's rates, and avoid Commissioner audits and enforcement measures. These off-dock moves continue to be made in support of on-dock moves but remain outside the oversight of the Commissioner.

Cascadia Off-Dock Drayage Insights Report

The prevalence of this activity was highlighted in the findings of the *Off-Dock Drayage Insights* report:

In recent years, a substantial portion of off-dock drayage activity has shifted to unlicensed companies. Several TLS license holders have set up unlicensed companies or partnered with an unlicensed company to complete off-dock drayage activities less expensively.²

The *Off-Dock Drayage Insights* report identified three primary reasons for the growth of unlicensed companies and untagged trucks performing off-dock work:

- An inability to perform the volume of work with the given complement of tagged trucks;
- A cost saving opportunity by having the ability to pay lower rates to drivers, giving them a pricing advantage with their customers; and
- An understanding of some container trucking activities as falling outside the jurisdiction of the *Container Trucking Act*.³

The report concluded by outlining options proposed by stakeholders to adjust container trucking legislation, TLS licencing rules, and/or OBCCTC rates in support of a stable, efficient, and competitive drayage sector in the Vancouver Gateway. They included:

- Legislating based on hourly minimums only to ensure that drivers are compensated fairly, regardless of compensation model;
- Introducing a short trip rate for trips under 5km long to ensure TLS licensed trip rate drivers can compete for short-loop off-dock work; and
- Easing tag restrictions for TLS companies so that TLS companies can run untagged trucks to help accommodate off-dock drayage volumes while still paying TLS rates.

Industry Consultation

On September 23, 2020, the Commissioner issued a call for submissions seeking feedback from stakeholders on the *Off-Dock Drayage Insights* report and input on off-dock issues with a specific focus on: which container movements should (or should not) be regulated; what rates should apply to those

² *Off-Dock Drayage Insights*, Cascadia Partners, September 2020, p. 15.

³ *Off-Dock Drayage Insights*, Cascadia Partners, September 2020, p. 24.

container movements; and, options for enforcement. Submissions received by the Commissioner are summarized below.

Submission Summary

BC Trucking Association	Unifor
Port Transportation Association	United Truckers Association
Shipping Federation of Canada	United Truckers Association – Legal Counsel
Harbour Link Container Services Inc.	Teamsters Local Union No. 31
Unique Trucking Ltd.	OBCCTC Website Submissions

Website Submission Summary

Stakeholder Identification	Count of Entry
Associations	3
Company Driver	2
Container Depot & Export Stuffing Facility	1
CTS Licence Holder	11
Driver for an owner/operator	5
Independent Operator	73
Trucking Company (Non-Licensee)	1
Grand Total	97

Scope of the Container Trucking Act and Regulation

The BC Trucking Association (“BCTA”) membership is concerned that the current legislative framework is ambiguous and says that it is the responsibility of the Commissioner to resolve this ambiguity. The BCTA argues that recent Commissioner decisions have been made in isolation and therefore have not provided the clarity industry requires. The BCTA submits that it is the responsibility of the Commissioner to take a clear position with respect to off-dock regulation:

The ambiguity in the legislation must be resolved by direction from your office. If you believe the current legal framework provides you with the authority to regulate off-dock moves, state so clearly on licenses and enforce the provisions consistently. If not, state so unequivocally and consistently step away from enforcement in this area.⁴

Harbour Link Container Services Inc. (Harbour Link), a BCTA member, submitted separately and states that anomalies between the *Act* and *Regulation* have resulted in licenced companies using non-licenced operators to perform off-dock container trucking services. Harbour Link attributes the alternating use of licenced and non-licenced carriers to perform on or off-dock CTS to the introduction of the PMR and the requirement to pay a full trip rate for short haul trips. Harbour Link believes that the use of non-licenced carriers and trucks to perform off-dock CTS is a violation of the conditions of the CTS

⁴ BC Trucking Association submission, October 15, 2020.

Licence and that all marine container drayage in the Lower Mainland should be regulated. Harbour Link seeks clarity in the language and the application of the legislation to that effect.

Another licensee, Unique Trucking Ltd., points out that there is almost a \$40 variation between the licenced and un-licenced off-dock rates. This discrepancy, they submit, is unfair, noting that there should be one set of regulations for everyone. Unique Trucking Ltd. suggests that a limit should be placed on the off-dock fleet size of each Lower Mainland drayage company.

Members of the Port Transportation Association (PTA) and the Shipping Federation of Canada do not support further regulation. The PTA believes that the focus on off-dock regulation has come about as a result of advocacy on behalf of a small group of I/Os (unionized and low in seniority) and that any further regulation and associated rate enforcement will jeopardize the stability of the sector. The Shipping Federation of Canada notes that “all users in the gateway are looking for ways to reduce costs” and strongly supports healthy competition in all areas of the supply chain believing that this leads to the best and more efficient service and price outcomes.⁵

Coast2000 Terminals, an unlicensed off-dock container storage and drayage provider, does not support an expansion of the *Regulation* but does suggest that further clarity of the existing regulation is required. It submits that “ocean containers which are moving to and from locations in the Lower Mainland related to an import or export transaction should be captured by the current regulation” and provides a detailed explanation supporting their proposed interpretation of “container trucking services”:

Each import transaction requires at minimum a laden movement from the container terminal to the receiving facility, that movement and any in between the terminal and receiving facility should be considered part of the regulated import movement. In the event an empty container must be delivered to any facility not within the same facility receiving the cargo, that movement (as often directed by the Ocean Carrier) should also be considered as part of the regulated import movement.

Each export transaction requires at minimum a laden movement from the loading facility to the container terminal, that movement and any in between the loading facility and terminal should be considered part of the regulated export movement. In the event an empty container must be delivered to the loading facility and is not already within the same facility loading the cargo, that movement (as often directed by the Ocean Carrier) should also be considered as part of the regulated export movement.

Movements which occur within the Lower Mainland that are not related to the import or export of cargo should not be regulated. The clear delineation of a regulated move begins and ends with the use of the container for importing or exporting. To provide an example: If a container is

⁵ Shipping Federation of Canada submission, October 14, 2020.

delivered to a Lower Mainland facility from an Intermodal Rail terminal with goods loaded inland, the delivery of the container to that facility should not be regulated.

The delivery of that container empty to any other facility as part of "returning" the container to its owner should also not be regulated. In the event the container is delivered to a facility which will be loading the container with cargo for export, that movement should be considered regulated.

Coast2000 notes that the movements of ocean containers used for the domestic repositioning program from eastern Canada to the Lower Mainland should be exempt, as those movements are unrelated to an ocean transport. Coast 2000 states that under Canadian law, an ocean container can be used once only for a domestic move and Coast2000 believes that OBCCTC regulations for these domestic movements should dovetail with this federal law.

Another submitter proposed a new definition of "container" stating that regulated containers should be IN GAUGE marine containers, including flat racks and open tops, with the only exception being OOG (out of gauge or excessive weight) flat rack or open top containers that require specialized truckers and equipment to move such as drop deck trailers and overheight/overwidth/overweight permits.

Unifor and the United Truckers Association (UTA) generally take the position that the current distribution of drayage services across licenced and non-licenced companies represents a form of rate undercutting that is in direct contravention to the legislation and the intent of the 2014 Joint Action Plan. Both contend that the Commissioner has the authority under the current legislation to enforce off-dock rates on non-licenced companies but have nevertheless offered options to ensure that all off-dock drayage services are regulated in the future. The UTA submits that the CTS Licence should prohibit licensees from carrying out CTS with affiliated companies unless the affiliated companies are also licenced. Unifor states that the *Act* and *Regulation* should be amended to stipulate that "any company that provides container trucking services within the Lower Mainland must be a licensee." Alternately, Unifor suggests that the *Act* and *Regulation* be amended to apply minimum standards to all drayage in the Lower Mainland regardless of licence status.

All 80 driver submissions received through the OBCCTC website supported regulating the off-dock industry. Submissions made online by company representatives varied on the matter of regulatory scope. Those who supported expansion of the regulation did so based on fairness and equity, noting that "companies are profiting from paying less on their off-dock moves and charging less to customers taking business away from legitimate carriers." One submitter suggested that the movement of any container smaller than 53 feet should be regulated. Other companies do not support regulatory expansion suggesting that only on-dock moves should be regulated.

The matter of truck tags, their assignment to CTS Licences, and the use of untagged trucks by licensees to perform off-dock container trucking services was raised by several submitters. Many submitters confirm that licensees are using untagged trucks to perform off-dock container trucking services. Drivers are concerned about the loss of work to these drivers/trucks and are aware that these container trucking services are being performed at lower rates.

Harbour Link argues that the Commissioner should not have the authority to decide the number of truck tags assigned to a CTS Licence and notes that the Commissioner's control of the number of truck tags assigned to licences has damaged the industry and been counter-productive. Harbour Link cites the proliferation in the number of untagged trucks being used by licensees to perform container trucking services and reasons for their use (highlighted in the Cascadia report) as evidence in support of their argument.

The PTA believes that regulating off-dock activity requires providing truck tags to all companies in the number the companies request.

Rates

The BCTA did not offer any specific off-dock rate recommendations but did note that the "imbalance of rates between off-dock scheduled rates and rates available in the broader transportation community has created the motivation to operate outside the regulation. The rapid and repeated increases to rates at different intervals have also created unintended inequities between hourly and trip rated operations."

Harbour Link supports the current rate levels and structure but advocates strongly for the introduction of a short (less than 10km) trip rate. Unique Trucking Ltd., as well as several companies that submitted on the OBCCTC website, supports the extension of the existing off-dock trip rates and hourly rates to all off-dock activity. Likewise, Unifor strongly supports the use of the current off-dock rate schedules but "completely rejects" the notion of a short trip rate noting that the introduction of "new, lower rates for certain types of moves will only complicate an already complicated system."

The Teamsters continue to advocate for an industry-wide hourly pay model noting that hourly paid drivers are less vulnerable to the vagaries of dispatchers and company reprisal through dispatch.

Most online submitters support the extension of the Commissioner's current rate structure on all off-dock moves with several suggesting that the CN and CP intermodal terminals must be considered on-dock locations for the purpose of rate enforcement.

Enforcement

It is clear from the submissions that there remains much confusion regarding the conditions of the *Act*, *Regulation* and CTS Licence. For example, the BCTA has asked that the Commissioner amend the CTS Licence to include a provision that requires licensees to only utilize tagged trucks for all off-dock and on-dock moves and compensate in accordance with the licence. That provision existed in the 2018 CTS Licence (s. 6.9) and remains in the 2020 CTS Licence (s. 6.8). A Bulletin addressing the requirement to only use tagged trucks for off-dock container trucking services was also issued by the OBCCTC on April 17, 2020. The requirement to compensate drivers per the Commissioner's Rate Order is well established in the *Act* and is the basis upon which all licensees have been audited and some penalized.

Several submitters, including drivers, licensees and representative organizations have proposed that the Commissioner increase enforcement by employing staff (enforcement officers) to patrol off-dock

container facilities to either track and report untagged off-dock container trucking service activity or issue tickets for licence violations.

Harbour Link proposes the implementation of a truck tag system that incorporates RFID technology to be used to check all truck movements at key container transfer points and, in the event a untagged truck is used to move a container, the Commissioner be alerted and instruct the receiver to deny the untagged truck access to their facility.

The UTA and Unifor believe that the Commissioner has failed to enforce his own directives with respect to licensee use of untagged off-dock trucks. Unifor advocates for swift enforcement, including licence suspension or cancellation, but also cites a number of other enforcement options including logging and reporting requirements by drivers and companies, check-in points for truck decals or other methods at major off-dock facilities, and the issuing of tickets by CVSE officers.

Scope of the *Container Trucking Act and Regulation*

The current scope of the *Act* and *Regulation* has been made clear. In the *2018 Container Trucking Regulation Part 4 (Rates and Remuneration) Recommendation Report* (2018 Rate Review Report), I noted that the regulatory scheme is intended to regulate the on- and off-dock transportation of marine containers that transit through VFPA container terminals by truck.⁶ An explanation of the scheme was provided:

The *Regulation* accounts for off-dock moves and recognises the interconnection between on-dock and off-dock marine container movements. Under the current scheme, prescribed container trucking services are defined as those services requiring access to a marine terminal. Likewise, a container under the *Regulation* is defined as “a metal box furnished or approved by an ocean carrier for the marine transportation of goods.” Section 16 of the *Act*, when read with section 2 of the *Regulation*, ensures that any company requiring access to a marine terminal to conduct container trucking services must have a Licence and therefore must adhere to the requirements of the *Act*, *Regulation* and Licence, including the payment of regulated rates for all on- and off-dock container trucking services performed by its drivers.

Further explanation of the container movements which attract the Commissioner’s rates were provided in two important decisions. Additionally, it has been determined that the movement of the following containers **do not** attract a rate:

- 53-foot containers that travel by rail to intermodal terminals in the Lower Mainland, are off-loaded and delivered locally by truck; and
- Marine containers that travel by rail to intermodal terminals in the Lower Mainland, are emptied and delivered by truck to a private container storage yard (it was determined that the

⁶ 2018 Rate Review Report, p. 7.

truck delivery of the empty container was not a container trucking service because this move is associated with a movement of a container by rail and therefore were not an off-dock move directly related to a regulated on-dock move).⁷

With respect to hourly rates, a detailed ruling was issued by the Commissioner in *Pro West Trucking Ltd.* (CTC Decision No. 06/2017). In that decision, the Commissioner found that the application of hourly rates for company drivers applies to container trucking services that include services that are directly related to, or ancillary to, the transportation of a container by a truck. The decision provided examples which included:

- Pre and Post trip inspections;
- The relocation or movement of empty chassis which have been used or will be used to move a container as defined in the Regulation (a “container”);
- “Bob Tail” moves to or from marine terminals or container facilities in the lower mainland; and
- The movement of containers by truck within a yard or facility.

On November 22, 2019, the Commissioner issued a Bulletin advising stakeholders that the Commissioner’s rates apply to the transportation of marine containers, including open top and flat rack containers, that transit through VFPA container terminals by truck. Out of dimension loads approved by the Port of Vancouver’s Out of Dimension Move Request process were excluded.

Another Bulletin, issued in April 2020, further clarified the scope of the *Act* and *Regulation*, particularly as it related to off-dock activity. Stakeholders were advised that:

- licensees must pay off-dock rates for both trip and hourly paid drivers;
- licensees must pay the required off-dock rates (trip or hourly) for moves to and from the CN and CP intermodal facilities and must also pay the PMR on off-dock moves where trip rates are paid; and
- it is a requirement of the *Regulation* and CTS Licence that licensees use tagged trucks for all on- and off-dock moves.

The off-dock issues, canvassed in the *Off-Dock Drayage Insights* report, have arisen, in part, because stakeholders have adapted their practices to avoid the existing regulatory requirements, not because the scope of the *Act*, *Regulation* and Licence are unclear or that their applicability has not been properly communicated.

It is now clear that drivers at licenced companies are continuing to lose work to lower paid drivers at unlicensed companies, undermining the intent of the Joint Action Plan and destabilizing the industry.⁸ Increasingly, CTS Licence holders are setting up second, unlicensed transport operations, or contracting with others, in order to complete off-dock drayage trips paid at lower rates. Cascadia reports that this

⁷ Canadian National Transportations Ltd. (CTC Decision No. 02/2019), pages 2 & 3.

⁸ Off-Dock Drayage Insights Report, page 15.

phenomenon has resulted in a shift of major customers (large cargo owners) to CTS licenced companies that have an affiliated unlicensed partner as they are able to provide a subset of drayage services at a lower cost.⁹

I do not believe that the recommendations made in this report will jeopardize the stability of the sector and while I support efficiency and competition I do not believe that either will be sacrificed if drivers at unlicensed companies are paid the required rates for those container moves which are currently contemplated by the *Act* and *Regulation*. There has been no indication that the introduction of regulated rates and subsequent rate increases have impacted the competitiveness of the Gateway. Rather, competitiveness has been impacted by the emergence of an unregulated fleet. Truck drivers are entitled to fair remuneration and any situation where driver remuneration is unregulated only gives rise to greater instability in the industry. It is true that trucking costs are an important consideration and must not be allowed to grow unchecked, but it is also true that driver remuneration is only one part of the overall cost of trucking containers.

The definition of “container trucking services” and/or “container” does not require amendment. The current definitions, supplemented by Commissioner decisions and publications, sufficiently establish the type of containers and container movements which attract the Commissioner’s rates and are, in fact, consistent with the recommendations of submitters.

The issue of untagged trucks performing container trucking services on behalf of un-licenced companies was canvassed in the 2018 Rate Review Report. At that time, I noted that the intent of the regulatory scheme was not to introduce the opportunity for rate undercutting and instability, and I raised concern that licence holders may be assigning work to drivers at affiliated but unlicensed companies. This can be achieved relatively quickly by amending the terms and conditions of the CTS Licence. The Commissioner has the ability under section 19 of the *Act* to amend the Licence provided notice of the amendment is given. In the interest of addressing this issue expeditiously, I recommend amending the CTS Licence to apply the terms and conditions of the CTS Licence to any company that is affiliated with a licensee, and through that affiliation, is moving containers which are currently captured by the *Act* and *Regulation*.

It should also be a requirement of the CTS Licence that licensees make available upon request any contracts between the licensee and entities carrying out CTS on their behalf, and that those contracts demonstrate that truckers performing CTS on behalf of licensees are being paid the required rate.

Recommendation 1

Amend the CTS Licence to apply its terms and conditions to any company that is affiliated with a licensee and moving containers that are currently captured by the *Act* and *Regulation*. Amend the CTS Licence to require licensees to make available upon request any contracts between the licensee

⁹ Off-Dock Drayage Insights Report, page 19.

and entities carrying out CTS on their behalf, and that those contracts demonstrate that truckers performing CTS on behalf of licensees are being paid the required rate.

The role of truck tags must be addressed in this context. Cascadia, as well as submitters to this consultative process, have identified the use of untagged trucks to perform off-dock container trucking services as a contributing issue which is undermining the stability of the sector.

The OBCCTC issued a consultation document in late 2019 in which the issue of truck tags was canvassed extensively. The OBCCTC raised concern that using untagged trucks for off-dock work was negatively impacting the OBCCTC's audit and enforcement capabilities because of the difficulty of tracking untagged container trucking service activity. However, it was noted that enforcing the requirement to tag all trucks under licence performing container trucking services would dilute the available amount of on-dock work for existing drivers of tagged trucks at licenced companies and could increase congestion/wait times at the terminals. In response, the OBCCTC proposed a two-tiered truck tag system (on-dock and off-dock tags).¹⁰ A separate class of tags was proposed to ensure that there would not be an increase to the number of trucks that could access a port terminal and it was intended that affixing a different class of truck tag to untagged off-dock trucks would enable the OBCCTC to better enforce rate compliance and confirm that the licensed carrier had obtained a sufficient bond based on its total fleet size. This proposal was eventually abandoned in response to stakeholder concerns.

The VFPA's performance review program is the basis upon which the OBCCTC grants and removes truck tags from licensees and assesses truck tag activity. Recent changes to the performance review program have confined performance assessment metrics to on-dock activity only; however, all tagged trucks under the 2020 CTS Licence have access to VFPA property regardless of whether the trucks perform on or off-dock container trucking services. As such, the OBCCTC is administering a truck tag program that should account for on- and off-dock activity but only accounts for on-dock activity, with the result that adjustments have to be made to account for this.

Currently, the OBCCTC issues and removes truck tags from a Licence, either at the time of licensing or during an application window during the term of the Licence. The Commissioner has the authority to determine the total number of truck tags available across the sector and this determination is based on an assessment of the required number of trucks to service the annual volume of containers moving through Port of Vancouver container terminals. Stakeholders continue to argue that they should be assigned unrestricted numbers of truck tags because they struggle to meet demand for on-dock drayage with tagged trucks during periods of high demand.¹¹ However, assigning more truck tags to licensees in response to terminal access issues will not address, and will instead likely exacerbate, structural challenges in the industry regarding dispatch practices, driver pay structures and the management of terminal access.

¹⁰ CTS Licence Reform (2020 Licence Application Process & Tag Management Policy) consultation document, November 2019.

¹¹ Off-Dock Drayage Insights Report, page 16.

The VFPA's focus should remain on terminal access and truck performance issues because it collects and controls the data that informs truck tag allocation decisions. As the truck tag system is one that is designed to account for on-dock activity, it should not be expanded to address off-dock issues, nor is its expansion required. The primary purpose of the regulatory scheme is to ensure compliance with rate payment and labour practice requirements, hence the OBCCTC's focus on container trucking services being performed by drivers under licence. A truck tag is not required for the OBCCTC to track driver pay.

The OBCCTC has amended the current licence to require the identification of all drivers and trucks performing container trucking services. The OBCCTC will enforce this requirement. Provided the terms of the licence are amended to ensure that all drivers performing off-dock container trucking services are covered, the purpose of the legislation will be fulfilled without implementing a requirement to issue truck tags to off-dock trucks.

Therefore, I recommend that truck tags only be assigned to licences for the purpose of identifying trucks that require access to a marine container terminal. I do not recommend assigning truck tags, and therefore terminal access, to all trucks that perform container trucking services and I do not expect that the VFPA will issue an Access Agreement to all companies that provide container trucking services within the Lower Mainland. The CTS Licence should be amended to reflect this change.

Recommendation 2

Assign truck tags to licences only for the purpose of identifying trucks that require access to a marine container terminal.

The amount of the required security associated with the licence is currently based upon the size of a licensee's fleet which is reflected in the number of truck tags issued to the licensee. It is important that the amount of the security remains tied to the size of a licensee's container trucking services fleet. If truck tags are only assigned to trucks performing on-dock container trucking services, section 25 of the *Regulation* must be amended to require licensees to provide a security in an amount that is linked to the number of trucks, identified under licence, that perform container trucking services.

Recommendation 3

Amend section 25 of the *Regulation* to require licensees to provide a security in an amount that is linked to the number of trucks, identified under licence, that perform container trucking services.

Licence and Access Agreement charges are also based on the number of truck tags issued to the licensee. As noted in the 2018 Rate Review Report, the OBCCTC is funded by a portion of the Truck Licensing System ("TLS") fees collected by the VFPA and is allocated money on a "per truck tag" basis.¹²

If the OBCCTC monitors off-dock moves more comprehensively, and the number of truck tags assigned to licensees is maintained (or decreased as it was in 2020), then the OBCCTC's current funding model

¹² 2018 Rate Review Report, p. 24.

will have to be amended to ensure that the OBCCTC is able to maintain, or increase, its audit and enforcement capacity. Rather than tie the amount of OBCCTC funding to the number of truck tags assigned to a licence, it is recommended that OBCCTC funding, like the security, be tied to the number of trucks, identified under licence, that perform container trucking services.

If this occurs, the VFPA will not be able to collect fees on behalf of the OBCCTC for untagged trucks. Government may wish to consider either collecting fees on behalf of the OBCCTC or authorizing the OBCCTC to collect fees itself.

Recommendation 4

Tie OBCCTC funding to the number of trucks, identified under licence, that perform container trucking services.

Rates

The issue of rates was raised within the context of this review because more comprehensively monitoring the rate paying requirements of the Act impacts the OBCCTC's enforcement capability. One way to mitigate this issue would be to change the rate structure such that non-compliance is discouraged and the requirement to audit reduced. Changing the rate structure to encourage compliance, however, remains a contentious issue. What little stakeholder input received regarding rates indicates that stakeholder opinion has not changed since rates were reviewed in 2018.

Generally, stakeholders either prefer no regulated rates for off-dock activity or to have the existing rates apply to all off-dock activity. There remains no consensus regarding the introduction of a short trip rate, an obvious rate balancing mechanism, and only the Teamsters advocated for the introduction of an industry-wide hourly pay model. The level of trip rate remuneration for moves to and from CN and CP intermodal terminals continues to be a concern for some drivers.

A short trip rate was recommended in the 2018 Rate Review Report but was not adopted. Nor was the recommendation to include the CN and CP intermodal terminals in the on-dock rate schedule. While I support those recommendations, I will not repeat them in this report as the recommendation below supersedes the necessity of implementing those recommendations.

The introduction of an industry-wide hourly pay model was canvassed in 2018 and, at that time, I was of the opinion that the existing regulatory rate structure should remain unchanged but noted that "the industry may elect to move to an all hourly pay model on its own, either through the collective agreement bargaining process or in response to trip rate regulation reform."¹³

To some degree that has occurred. In response to rising costs, driven in part by changes to the trip rates, the introduction of the PMR, and OBCCTC enforcement, industry has pivoted. In addition to the proliferation of off-dock activity being discussed here, licensees, in particular, are increasingly seeking to

¹³ 2018 Rate Review Report, p. 14.

shift their driver composition from I/Os to company drivers, to be cost competitive, meet shipper demands, and to provide themselves with more operating flexibility.¹⁴

At the same time, the potential benefits of an industry-wide hourly pay model remain. A two-tiered rate structure (trip/hourly) continues to present opportunities for rate undercutting and while compliance issues would not be completely resolved by the introduction of an industry-wide hourly pay model, I believe compliance would be greatly increased if driver pay structures were simplified. The introduction of an industry-wide hourly pay model could also increase the competitiveness of the sector by resolving terminal wait time concerns and increasing efficiency in licensee dispatch.

Most importantly, the introduction of an industry-wide hourly pay model would greatly enhance the audit and enforcement capabilities of the OBCCTC. Put simply, it is much easier to track hours worked than trips performed and the OBCCTC's effectiveness will diminish unless compliance increases, and audits become less onerous.¹⁵

Recommendation 5

Amend the Rate Order to eliminate trip rates and the Positioning Movement Rate and introduce comparable minimum hourly rates for all employees and Independent Operators.

It should also be noted that the introduction of an industry-wide hourly pay model would assist in simplifying and standardizing future rate reviews conducted by the Commissioner. An analytical structure of I/O truck costs has already been developed by the OBCCTC.¹⁶ Future hourly I/O rate reviews could be undertaken by reviewing the costs/assumptions built into the existing analysis and combining those findings with a review of the hourly employee driver rate which could be tied to the rate of inflation.

Enforcement

The effectiveness of the Commissioner's audit and enforcement capabilities is central to the success of the legislative scheme. Stakeholders suggest that an expanded truck tag program, combined with the use of OBCCTC enforcement officers, and stronger penalties for non-compliance are required.

I do not agree. The issues with the existing VFPA GPS program were canvassed as part of the initial 2020 CTS Licence reform proposal regarding a two-tiered truck tag system. In short, the existing VFPA GPS program does not track container trucking services for the purpose of determining rate compliance. That, in part, is why I am not recommending an expansion of the tag/GPS program.

The development of an OBCCTC enforcement officer program is not practical. The costs (monetary and time) and human resources required to develop such a program are prohibitive and I remind

¹⁴ Off-Dock Drayage Insights Report, page 16.

¹⁵ Off-Dock Drayage Insights Report, page 25.

¹⁶ 2018 Rate Review Report, Appendix V.

stakeholders that the OBCCTC's operations are funded through licence fees which stakeholders suggest are already too high. Further, there is no indication that an OBCCTC enforcement officer program would result in higher rates of compliance. OBCCTC audits have demonstrated widespread non-compliance with the provisions of the NSC, which is currently enforced by a substantially larger program that includes enforcement officers.

I agree that the issuance of appropriate penalties is an important contributing factor to the success of the legislative scheme. Penalties for non-compliance have increased, over time, where appropriate. The recently concluded 2020 CTS Licencing process introduced, for the first time, compliance history considerations in the assignment of truck tags under licence and introduced stronger licence conditions intended to increase compliance and increase the OBCCTC's enforcement capacity.

As noted earlier in this report, the 2020 CTS Licence includes conditions requiring licensees to list all trucks and drivers performing container trucking services. This was done to ensure that the OBCCTC can better track all container trucking services activity independently of the truck tag system. That alone, however, will not be sufficient to enforce off-dock rate payment. Some have suggested that the OBCCTC employ technology to track off-dock container trucking services. I agree. The OBCCTC cannot enforce rate payment if it is not aware which trucks are performing container trucking services.

Currently, motor carriers and drivers are required to maintain a daily log. The Government of Canada has mandated that the current logs are to be replaced with electronic logging devices ("ELD"). ELDs are equipment that automatically record driving time in commercial motor vehicles. Motor carriers are being required to choose, buy, and install certified ELDs in their commercial motor vehicles by June 12, 2021. This requirement does not apply if:

- the driver drives or is instructed by the motor carrier to drive a commercial vehicle within a radius of 160 km of the home terminal;
- the driver returns to the home terminal each day to begin a minimum of 8 consecutive hours of off-duty time; and
- the motor carrier maintains accurate and legible records showing, for each day, the cycle the driver followed and on-duty times and keeps those records and the supporting documents relating to those records for a minimum period of 6 months after the day on which each record was recorded.¹⁷

¹⁷ Regulations Amending the Commercial Vehicle Drivers Hours of Service Regulations (Electronic Logging Devices and Other Amendments): SOR/2019-165, section 77(3).

I recommend that in conjunction with the introduction of an industry-wide hourly pay model, it be made a requirement of licence that all licensees install on each truck a third-party certified ELD in order to track all container trucking services and enforce the required rates, and require their affiliates to do the same. The data generated by an ELD should be kept by licensees and made available to the OBCCTC during audit and upon request. The CTS Licence should also be amended to include penalties for withholding and altering this information.

Recommendation 6

Amend the CTS Licence to require that licensees install on each truck a third-party certified electronic logging device and make available to the OBCCTC all data generated by the ELD upon request, and require affiliates to do the same, and include penalties for withholding and altering this information.

Unifor has recommended that enforcement could be enhanced by utilising CVSE officers to issue tickets for violations of the *Act*. CVSE officers can be designated as “enforcement officers” for the purposes of the *Violation Ticket Administration and Fines Regulation* for certain offences. Part 6 of the *Act* creates one offence in section 42 which is breach of section 16 for performing container trucking services without a licence. However, this is not an offence CVSE officers can enforce. Breaches of other provisions of the *Act*, *Regulation* and Rate Order are not offences and therefore only the OBCCTC has enforcement jurisdiction.

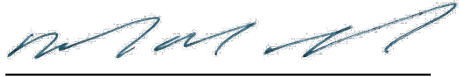
Nevertheless, I do not discount the importance of cooperation with CVSE or any other enforcement agency. Section 30 of the *Act* allows the Commissioner to enter into information sharing agreements with a director, person or entity approved by the Lieutenant Governor in Council. OBCCTC audits have uncovered, and continue to uncover, NSC, *Employment Standards Act* and *Temporary Foreign Worker Protection Act* violations which cannot be pursued by the OBCCTC or referred to other agencies which have jurisdiction to address these matters. In the interest of increasing overall compliance in the industry, ensuring labour stability and fairness for drivers in particular, I will seek to ensure that the OBCCTC enters into information sharing agreements with CVSE and the Employment Standards Branch for the purpose of referring OBCCTC audit findings outside of its jurisdiction to relevant agencies for enforcement proceedings.

Conclusion

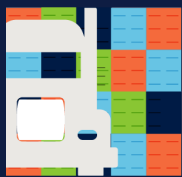
Progress has been made in stabilizing the Lower Mainland drayage sector. However, the desire to reduce costs, often at the expense of driver remuneration, has not abated. As a result, licensees are increasingly seeking to shift their driver composition from I/Os to company drivers in order to be cost competitive, meet shipper demands, and have more operating flexibility. Drivers at licenced companies are also losing work to lower paid drivers at unlicensed companies, undermining the intent of the Joint Action Plan and destabilizing the industry.

These issues are not new. Many were discussed in the 2018 Rate Review Report and have now been canvassed more thoroughly in the *Off-Dock Drayage Insights* report. This report supplements those that have come before it and provides recommendations that are intended to ensure fair and equitable working conditions that support an efficient and competitive Lower Mainland container trucking sector.

In six years, the industry has been subject to an entirely new legislative scheme and constant iterative reform. Throughout, stakeholder opinion has remained divided and, as time progresses, participation and interest in consultative processes have waned. This industry will not reform itself and new measures are required to bring lasting stability to the sector.

A handwritten signature in blue ink, appearing to read 'Michael Crawford', is positioned above a horizontal line.

Michael Crawford
Container Trucking Commissioner



OFFICE OF THE
BRITISH COLUMBIA CONTAINER
TRUCKING COMMISSIONER

1085 Cambie Street, Vancouver BC V6B 5L7

info@obcctc.ca

obcctc.ca

604-660-6051