



August 27, 2021

Mr. Michael Crawford
BC Container Trucking Commissioner
1085 Cambie Street
Vancouver, BC
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(submitted by email August 27, 2021)

Re: **Harbour Link Submission - Off-Dock Drayage Report**

Thank you for the opportunity to comment on the Off-Dock Drayage Recommendation Report of May 12, 2021.

Our comments focus primarily on the recommendations as provided in the report. We also comment on a few other items. Foremost, it is imperative that drayage companies maintain the ability to attract qualified I/O's and Company drivers. We must also keep operating costs controlled to the benefit of all gateway participants and protect business viability to serve the Port's existing container trade and support future growth.

It is our belief that a compensation model change, as drastic as changing to an hourly pay model for I/O's to replace I/O trip rates would be very disruptive to the Port's container trade and would result in an overall transport cost increase to all stakeholders. Productivity would most certainly decline due to the removal of the incentive for an I/O to complete each assignment expeditiously. A change to the hourly model would also negatively impact the retention and recruitment of I/O's to accommodate port traffic flows, future trade growth and impact labour peace.

In North America the commercial truck driver shortage has reached critical levels and all companies regardless of the type of trucking service provided are competing for drivers in a shrinking pool.

The ability of the drayage industry to fill vacancies is further exacerbated by the fact that drayage companies can only fill TLS Vacancies for owner operators from the exclusive I/O list managed by the Commissioner's Office. The Commissioner's list is comprised of I/O's that are employed in the drayage sector in Vancouver. The I/O list was developed with the best of intentions to facilitate greater I/O freedom of movement and to alleviate I/O's concerns that they were locked in and could not move within the industry for fear they would not be rehired. The I/O list provided the job protection within the drayage industry to facilitate I/O operators that wished to move within the industry for various reasons, such as, inadequate amount of work with the present employer, general working conditions and terminations or resignations.

Since the inception of the I/O list, however, to everyone's surprise there has been very little movement of owner operators between companies to fill TLS vacancies. An unintended consequence of the I/O list is, it has prevented carriers from filling TLS vacancies from a very short pool of approved I/O's. We strongly recommend a change be made to the administration of the approved I/O list by allowing carriers to nominate qualified drivers to be added to the I/O list. The closed list as it stands today is

discriminatory and needs to be changed. The proposed change should provide the Commissioner with visible oversight and control of additions to the I/O list while at the same time providing TLS Licensees the ability to fill TLS vacancies with qualified drivers in a timely manner in order to meet business demands. It is unreasonable to expect drayage companies to hold TLS vacancies open indefinitely for a small exclusive I/O list of applicants that may or may not meet the hiring qualifications of the Company.

Report Recommendation 1:

1. Amend the CTS License to apply its terms and conditions to any company that is affiliated with a Licensee and moving containers that are currently captured by the *Container Trucking Act* (the “Act”) and *Regulation*.

HL Response – Today, the Act and Regulations clearly require all Licensees to use only TLS sponsored trucks for all container drayage services (On Dock or Off Dock). A change to allow any company affiliated with a Licensee to use non-TLS Licensed trucks to perform CTS on behalf of Licensees will not address on its own the malfeasance that is currently taking place and only serves to legitimise an illegitimate practice taking place today.

We agree, however, that the CTS License should be amended to apply all conditions of the license to any company (“Related Person”) that is affiliated with a License Holder and the movement of containers that are currently captured by the *Act and Regulation*. *i.e., any movement of a container related to the transit of import or export cargo*. With the proviso that the trucks of the affiliated company/person must be TLS Licensed.

The OBCCTC has the tools through Audit of TLS Licensees and the administering of fines and penalties and to ultimately cancel a License to curb the practice of a licensee using non-TLS compliant trucks (shadow fleets) to perform drayage dispatches for Off Dock container movements.

A change as significant as described above will substantially strengthen the audit process, however, it is unlikely the OBCCTC will achieve full success to ensure drivers are properly compensated as the audit will continue to be difficult to uncover deceptive behaviour.

The whole point of regulation was to create job certainty for drivers and a level playing field for the TLS carriers to ensure drivers are paid appropriately. The audit continues to be the only effective tool to curb behaviour that is not consistent with the regulations.

We agree that the Commissioner should amend the CTS License to prohibit the License Holder from contracting with unrelated, unlicensed persons for the purpose of performing container trucking services *i.e.* to ensure the License Holder does not attempt to circumvent the Commissioner’s rates by entering into contracts or agreements for trucking services with unrelated or unlicensed persons which would have the effect of reducing the reliance on existing license holders that provide overflow services.

Report Recommendation 2:

Assign truck tags to licenses only that require access to marine container terminal.

HL Response – we do not agree with the above recommendation. It is our opinion that all trucks operated by a Licensee should be TLS licensed regardless of the local drayage activity performed i.e. On Dock or Off Dock. The elimination of the TLS license requirement for Off Dock will result in the container shuttle transfer activity between premises by non-TLS trucks outside of the marine terminal to increase dramatically.

Question: *What is the impact for the payment required for the trip?* Example: A TLS Licensed truck picks up the container at the marine terminal and then swaps the container with the non licensed truck at a location in close proximity to the marine terminal to complete the delivery of the container. In this scenario, the TLS truck should be paid a full zone rate to the transfer point and the second non licensed truck should also be paid the full zone rate from the transfer point to the final delivery. Under the current practice, we have assumed the additional zone rate is not presently being paid in the current unauthorized activity and any further expansion of a transfer shuttle may add to the difficulty in catching operators not paying correct rates.

Report Recommendation 3:

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

HL Response – No comment.

Report Recommendation 4:

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

HL Response – Harbour Link has always been in favor of a flat licensing fee to be charged to all licensed companies regardless of their fleet size (with the current example of 79 Licensed companies / divided by the \$2.24 million operating budget = \$28,354 each) and in addition a separate fee should be paid per TLS truck.

We do not agree that a TLS Licensee have 2 designated fleets, On Dock Fleet (TLS) and an Off Dock Fleet (Non-TLS). This practice will only lead to driver disharmony in the drayage sector. All trucks operated through a License authority should be TLS Licensed and capable of accepting both On Dock and Off Dock dispatches. A double-breasted fleet will cause labour disruption within operating companies. It is a fact that On Dock work generally takes more time than single transactions at an Off Dock facility. It is no secret that all drivers would if given a choice would prefer Off Dock work and a double-breasted fleet will cause significant driver disharmony within companies.

The suggestion of a double-breasted fleet would enable a licensee to bring additional trucks (non-TLS) on board as needed and if this is the case and the OBCCTC plan is to charge a fee for these non licensed trucks in addition to the Licensed trucks it defeats the intended purpose of gateway control. All trucks serving the local gateway local should be TLS Licensed without exception.

The use of shadow fleets today is a direct result of carriers not securing the tags they need to properly grow and operate their business. All trucks performing container drayage should be TLS Licensed as provided in the Act & Regulations. Applications by TLS carriers to the OBCCTC for additional TLS tags needed to support their business should be accommodated in accordance with the established approval process. No business owner will apply and pay for Tags that are not required for their business, i.e., verify fleet utilization on a regular day-to-day basis. An important measure as to whether a Licensee's application for additional tags is validated by existing fleet utilization. While the TLS tag system may be cumbersome for the OBCCTC, it is the only system that keeps the drayage carriers in line with the threat of full audit, penalties and ultimately License cancellation.

We do not see how having control of On Dock truck activity only makes the system better. One sided enforcement is not a recipe for success.

We all agree that the Audit process is cumbersome and time consuming but it is effective at changing behaviour. The OBCCTC should concentrate on the low hanging fruit and take decisive enforcement action against those not following the rules. Take action causes others to notice and behaviour does change.

Report 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.

HL Response – A compensation model change of this magnitude will have a disruptive effect on the entire gateway. Today, the trip rate model provides predictable price stability to operators and all gateway participants. Moving to an hourly model removes the compensation incentive that trip rates provide. The majority of I/O's prefer the trip rate model as they benefit monetarily for their productive behaviour for both short and long trip rates. Take away the incentive for operators to be productive by removing trip rates places an entirely new dynamic into I/O operator decision making and behavior that will result in the lengthening of time to complete dispatches and I/O's to accept specific drayage dispatches based upon their own self interest.

Today I/O's are fully compensated for the point-to-point trip, along with fuel surcharge and PMR payment to account for chassis switches required and waiting time as provided in union contracts as well as Port waiting time compensation.

Individual trip productivity will drop with a move to an hourly rate model. Additional trucks will be required to get the same amount of work done and the gateway will face higher rates as a result of such as change.

A change to an hourly model also has further negative impact on unionized companies. The PMR for instance is written into many contracts and it is unlikely the Unions will agree to the removal of a PMR Article requiring \$25 payment. This places the unionized carriers at a further distinct disadvantage to the non-union carriers.

A better overall approach is to approve applications for Company Trucks without disturbing the trip rate model for independent operators. Company trucks are for the most part double seated with Company employee's enabling one truck to work multiple shifts in the day with a second driver during the evening. Company trucks achieve overall positive impact in reducing the total number of trucks needed by the Licensee to service its customer base.

Miscellaneous Items:

1. Electronic Logging Device Requirement

HL Response – we do not see how ELD's would add any value to the audit process or the functionality of the OBCCTC. Logging devices are not a payroll time clock. ELD's were introduced to be an effective tool to monitor National Safety Code (NSC) Hours of Service (HOS) violations for highway drivers and are not an effective tool for any other purpose. ELD's start monitoring as soon as a truck is started and has no ability to differentiate between actual work time and a driver driving his truck to work or performing other non work driving activities. Installation of ELD's in all local trucks is an unnecessary expense with no value or ROI in the local environment. ELD's would not provide an accurate accounting of actual work hours and provides no assistance to the OBCCTC audit process.

We do not agree with the requirement for ELD's.

2. CONTAINER TRUCKING SERVICES LICENSE (Draft)

Definitions

“Business Costs” the definition of business costs should also have a provision for excluding certain costs from the definition.

HL Response - A major issue for all drayage carriers is the inability to charge operators for their failure to follow VFPA Electronic Sign Board Instructions. Recently, carriers have begun receiving fines from VFPA (\$525 per incident) for drivers failing to follow VFPA Electronic Sign Board Instructions. These failures by drivers should not be a cost of doing business for the License Holder. These costs should be an approved deduction from the Independent Operator bi-weekly settlement.

The OBCCTC and VFPA should work together to provide agreement for a Licensee to deduct from their Independent Operators the penalty \$ amount for their direct failure to follow instructions. Employee drivers however will continue to be disciplined for such behaviour up to and including termination if warranted.

Thank you for the opportunity to provide our thoughts as relates to the changes being considered.

If you have any questions or require further clarification please do not hesitate to contact the undersigned directly either by phone or email.

Yours truly,

HARBOUR LINK CONTAINER SERVICES INC.


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