

August 31, 2021
Michael Crawford
BC Container Trucking Commissioner
Office of the BC Container Trucking Commissioner
Via email: Registrar@obcctc.ca

Re.: BCTA Submission - OBCCTC Off-Dock Drayage Recommendation Report

Dear Commissioner:

Thank you for the opportunity to provide comments on the Off-Dock Drayage Recommendation Report released in May 2021 and for meeting with the British Columbia Trucking Association (BCTA) Intermodal Committee on August 12, 2021 to provide an overview of the Off-Dock Drayage Recommendation Report. BCTA and the Intermodal Committee have reviewed the report and developed the following submission.

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... [and] 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"*

- In periods of high demand, TLS carriers struggle to meet customer demand for both on and off dock moves. To address this issue, some companies will contract overflow services to other TLS carriers, while others contract with non-TLS carriers. Limiting the possibility to contract overflow services to TLS carriers-only will expedite audits and make it possible for the Commissioner to enforce the regulation. We note, however, that capacity issues may arise during peak periods.
- The requirement and responsibility for TLS carriers to ensure that proper rates are paid to drivers by contracted TLS/overflow carriers is unfeasible. TLS carriers do not have the ability to audit their contractor's books and ensure they are adhering to the rate table set by the OBCCTC. That enforcement activity falls to the OBCCTC and we entirely support the Commissioner's efforts in this area.
- BCTA recommends that the OBCCTC provides clarity with respect to the specific information being sought in contracts. Establishing a template will provide certainty for both the OBCCTC and the TLS carrier that an agreement has been established for proper rates to be paid.
- BCTA supports the identification of "shadow fleets"- unlicensed companies or companies that are affiliated with licensees that complete off-dock drayage activities less expensively.

Recommendation #2: *“Assign truck tags to licences only for the purpose of identifying trucks that require access to a marine container terminal”*

- BCTA is generally supportive of this recommendation as it is a step toward our broader mandate of de-regulation, but we are concerned that the provision will have unintended consequences of encouraging shuttling and / or moving to a business model designed not for efficiency, but for rate optimization that utilizes switch points proximate to the terminal. Such a practice is a short step from cross-loading containers, ultimately leading to a hollowing out of the sector.

Recommendations #3 and #4: *“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” and “Tie OBCCTC funding to the number of trucks, identified under licence, that perform container trucking services.”*

- BCTA has no philosophical concerns with the recommendation which strikes at both the funding and financing of enforcement, as long as the requirements are applied evenly and consistently.
- While laudable, this strategy is premised on the identification of trucks under licence at a given point in time. However, when read with Recommendation #2, TLS companies would be able to add trucks to their fleet to complete off-dock moves without obtaining tags, negating the OBCCTC’s ability to manage capacity. The problem arises when we consider the practical application. We cannot see how the OBCCTC staff can keep up with the assignment of off-dock moves as, to date, this has not been possible (or widely attempted).
- The cumulative approach to Recommendations #2, #3, and #4 is attempting to be all things to all parties at all times. Recommendations #3 and #4 seek to “tax” the trucks allocated by the TLS carriers to perform off-dock moves as required. Given that fleet sizes required for the movement of goods will fluctuate, we are concerned that even and consistent application of licence fees and security will remain elusive. Ultimately, the OBCCTC will be facing a choice: tag and regulate all trucks and all moves, or tag and regulate none. Anything else invites inconsistency, arbitrariness and encourages malfeasance. For the reasons discussed in our response to Recommendation #6 below, regulating all moves is not possible. Therefore, we believe that the end state of a free-market drayage sector should be reflected in the OBCCTC’s work.

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 (I/Os).*

- BCTA’s concerns remain the same with an hourly rate as they do with the current rate structure. Whatever the rate established, it must be consistently applied and aggressively enforced.
- BCTA believes that any hourly rate must be carefully constructed. We call on the OBCCTC and the provincial government to create an industry table to first establish what elements of compensation should be considered when setting a “reasonable hourly rate.” We believe a framework that identifies and benchmarks elements for driver compensation must be created. The next step would be for an independent party to complete a review that will be used to set initial rates. The framework created for these initial rates should be embedded by regulation to review compensation not more than bi-annually in an effort to strike a balance between predictability and adaptability for the sector.
- As the provision to move drayage drivers away from being independent and towards being an hourly-paid employee, BCTA strongly advises that the I/O list must be eliminated. If drivers are to be treated

and paid as hourly employees, the carrier must have the ability to manage their workforce as hourly paid employees. In such a scenario, carriers (and drivers) would be subject to all statutory and common-law employment provisions and both parties would benefit from the certainty that this framework provides. If a carrier loses their ability to manage the efficiency of their workforce by utilization of trip rates, they must have the ability to select, monitor, reward, and discipline their employees as required.

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"*

- BCTA does not support this recommendation but does support the principle behind it. ELDs are not an effective tool to capture payroll, rate compliance by container trucks, and/or accurately calculate the number of hours worked. ELDs are a method to track hours of service, but not to track the paid / unpaid activities of drivers. OBCCTC should seek other options that can accurately track all container truck services, enforce required rates, and ease the auditing process.

BCTA looks forward to working with the OBCCTC in taking this proactive step to ensure fair and equitable working conditions that support a stable, efficient, and competitive Lower Mainland container trucking sector.

Sincerely,



Dave Earle
President and CEO