

WESTAC
BRIEFING

REGULATORY UPDATE

**CONTAINER TRUCKING IN
PORT METRO VANCOUVER**

MARCH 17, 2015

This WESTAC Briefing has been prepared as a service to WESTAC members. It is intended to provide a summary of the main elements of the new regulatory framework for container trucking in the Vancouver area (“Lower Mainland”). It is not intended to comprehensively present each element of the new system.

The Briefing contains no conclusions, recommendations or advice, nor does it represent a WESTAC position. Any errors or omissions are the responsibility of WESTAC.

WESTAC and author, Lisa Baratta, Director, Strategy, extend thanks to the organizations who provided input for this document: BC Ministry of Transportation & Infrastructure, BC Trucking Association, Port Metro Vancouver and Transport Canada.

OVERVIEW

The purpose of this Briefing is to provide a summary of the main elements of the new regulatory framework for container trucking in the Vancouver area (“Lower Mainland”). This regulatory framework includes federal and provincial legislation and reforms to Port Metro Vancouver’s truck licensing system.

The architects of the new regulatory framework state that the changes will increase the stability of the container trucking sector by ensuring fair compensation for drivers, balancing the supply of trucks and the demand for trucking services, and expanding audit and oversight capabilities.¹

The primary components of the new system are:

1. **British Columbia Container Trucking Act and Regulations** (the “legislation”).² The legislation governs container trucking services in the Lower Mainland, whether the service is provided by employees of trucking firms, independent operators, unionized or non-unionized drivers. The legislation:

- establishes a B.C. Container Trucking Commissioner and sets out the powers of the Commissioner

- requires trucking companies to hold a licence to provide container trucking services
- sets initial minimum rates of remuneration and fuel surcharges

2. **Reform of Port Metro Vancouver’s Truck Licensing System (“TLS”).** TLS reforms include:³

- new entry standards
- new licensing charges and other financial requirements
- new minimum truck age requirements

In addition, the Government of Canada amended regulations regarding port licensing to ensure compatibility with the provincial legislation.⁴

1. See *Transport Canada Backgrounder, “Canada and BC Governments Unveil New Model for Port Metro Vancouver Container Trucking Industry”* (October 15, 2014); *British Columbia Ministry of Transportation and Infrastructure, “Information Bulletin 2014TRAN0101-001891: Province acts to ensure fair compensation for truckers and reliable port operations”*, December 15, 2014; *Port Metro Vancouver News Release, December 1, 2014, “New truck licence policy launched to stabilize port container trucking operations”*.

2. *Container Trucking Act, S.B.C. 2014, c. 28*. <http://www.bclaws.ca/civix/document/id/complete/statreg/14028_01>; *Container Trucking Act: Container Trucking Regulation, B.C. Reg. 248/2014*. <http://www.bclaws.ca/civix/document/id/complete/statreg/248_2014>.

3. For more information see the *Port Metro Vancouver Truck Licensing System for Local Drayage TLS Handbook* and other reports available from Port Metro Vancouver’s website, <http://www.portmetrovancover.com/en/portusers/landoperations/trucking>, and at <http://porttalk.ca/tls>.

4. *Canada Marine Act: Regulations Amending the Port Authorities Operations Regulations (2014)*. *Canada Gazette Part II*, 148(27). <<http://www.gazette.gc.ca/rp-pr/p2/2014/2014-12-31/html/sor-dors308-eng.php>>.

CONTAINER TRUCKING IN PORT METRO VANCOUVER

Containers are transported to and from marine container terminals located on Port Metro Vancouver property (“on-dock”), and to and from warehouses, rail yards, transload centres and storage yards (“off-dock”). In 2014, approximately 47% of the nearly 3.5 million TEUs handled by Port Metro Vancouver’s marine container terminals were moved by truck.

Over the past 15 years there have been three disruptions (1999, 2005 and 2014) when a significant number of container truck drivers stopped providing services in the Lower Mainland. The main issues in the disputes have been similar: terminal wait times, reservation policies, rate undercutting, and inequality in rates. In the 2014 disruption, lack of an effective audit and enforcement system was also an issue.⁵

An interim truck licensing system was introduced by the Vancouver Port Authority (now Port Metro Vancouver) in 1999. Following the 2005 disruption, the federal government mandated Port Metro Vancouver to implement and manage a truck licensing system that included minimum rates of remuneration for owner-operators as determined by a Memorandum of Agreement. Over the next several years, several

new measures and changes were introduced including a rate auditing program established by the Province of British Columbia and a moratorium by the port on new licences for owner-operators. In addition, the applicability of minimum rates was clarified to exclude off-dock trips. Despite these efforts to bring greater stability to the industry, the sector continued to experience difficulties and in February 2014, a substantial number of trucks stopped serving the port for several weeks.⁶

To resolve these ongoing issues the Government of Canada, the Province of British Columbia and Port Metro Vancouver developed a new regulatory framework for port-related container trucking. This regulatory framework includes federal and provincial legislation and reforms to the port’s truck licensing system. The intended objective is to stabilize local container trucking operations in the Lower Mainland and improve the efficiency of container trucking. The new framework supports efforts to resolve the most recent dispute including the Joint Action Plan⁷, the recommendations report of mediators Vince Ready and Corinn Bell⁸, and consultations with drivers, trucking companies, terminal operators and shippers.

5. See the Ready, Vince and Bell, Corinn, “Recommendation Report – British Columbia Lower Mainland Ports” [Ready-Bell report] <<http://www.tc.gc.ca/eng/policy/acf-acfp-menu-3138.html>> for a more comprehensive summary of previous port disputes.

6. For a more comprehensive background of steps taken to resolve disputes and stabilize the industry see the Ready-Bell report pg 2; Asia Pacific Gateway Skills Table, “Drayage Owner-Operators: Understanding Container Drayage Owner-Operators in Metro Vancouver – Summary Report” (July 2013) pgs 12 & 22; Asia Pacific Gateway Skills Table, “Labour Force Profile: Port Drayage Drivers in Metro Vancouver” (May 2013) pg 13.

7. On March 26, 2014, the Government of Canada, the Province of British Columbia and Port Metro Vancouver agreed to a “Joint Action Plan” with the United Truckers Association and Unifor to resolve the 28-day trucker work stoppage. The Action Plan included: a commitment to increase trip rates, to ensure off-dock trips have a regulated rate, and expand the audit program, among other items. See <http://portmetrovancover.com/docs/default-source/ABOUT-Media/2014-03-13-action-plan-march-final2.pdf?sfvrsn=8>.

8. Ready-Bell report.

Lower Mainland Container Terminals and Truck Zones



Glossary

- **Commissioner** – B.C. Container Trucking Commissioner appointed by the Province of British Columbia
- **driver** – an employee or independent operator; can be a union member or non-union
- **employee** – includes direct employees of trucking companies who drive company trucks and employee drivers of independent operators
- **independent operator** – an independent operator of container trucking service who has an ownership or leasehold interest in a truck and contracts their services to an approved TLS company
- **licensee** – a trucking company possessing a licence to operate container trucking services at the port
- **marine container terminals** – Centerm, Deltaport, Fraser Surrey Docks, Vanterm
- **off-dock trip** – a container move that does not involve a container terminal (e.g. from a warehouse to a railyard)
- **on-dock trip** – a container move to or from a container terminal
- **port** – Port Metro Vancouver
- **short trip** – a container move within 5 km
- **trip** – a container move in one direction

1. TLS REFORM

Port Metro Vancouver has administered a truck licensing system for a number of years. Under the new regulatory framework, previous licence holders (trucking companies) were invited to re-apply to the port for a licence which, if granted, was effective as of February 1, 2015.

The new TLS reduced the number of trucks and the number of trucking companies providing container services. The number of trucks was reduced by approximately 25%, from 2,000 trucks to 1,450 trucks.⁹ The Port voluntarily established a financial support program (including transition payments up to \$15,000) for independent operators displaced by the new system.

The *Port Metro Vancouver Truck Licensing System for Local Drayage TLS Handbook* (available from porttalk.ca/tls/documents) details the minimum requirements trucking companies must meet to obtain a licence and to access port property. It also sets out additional considerations that were taken into account in awarding licences. Some of the key provisions of TLS reform are outlined on the following page.

9. As of February 18, 2015, Port Metro Vancouver had granted final approval to 67 companies representing approximately 1,450 trucks.

Entry standards – size & structure

- applicants must have held a licence under the previous TLS
- applicants must be trucking companies that have a minimum of five trucks (company-owned and/or sponsored independent operators); independent operators must be sponsored by a trucking company
- two trucking companies may align and apply jointly
- preference given to companies with larger fleets and to single-licence applicants

Financial requirements

- minimum annual access agreement charges:
 - \$35,000 ≤ 15 trucks
 - \$45,000 = 16 to 20 trucks
plus
 - \$2,250/truck > 20+ trucks
- damage deposit of 10% of total annual charges, up to a maximum of \$10,000
- compliance/surety bond of \$250,000 for up to 20 trucks; \$125,000 per additional 10-truck increment

All fees levied under the system are intended to fund the system on a cost-recovery basis. To demonstrate cost recovery, the Port will provide annual updates on the costs of various aspects of the program and revise the annual charges as appropriate.¹⁰

Truck age requirements

- trucks approved under the new TLS must be 2007 or newer (some exceptions apply¹¹)
- by 2022, only trucks 10 years old or newer can access the port
- preference given to companies with newer fleets

All licences issued by the port are deemed to be licences under the new provincial legislation and fall under the jurisdiction of the Commissioner. The port retains responsibility for issuing Access Agreements to the licence holders to maintain access to the marine container terminals.

Going forward, the Commissioner will administer licences. This includes determining whether any new licences should be issued and under what conditions.

10. *Port Metro Vancouver Truck Licensing System for Local Drayage TLS Handbook, pg 2.*

11. *Trucks licenced under the previous TLS which are model year 2005 or older are only permitted if retrofitted with a diesel oxidation catalyst (DOC) (effective January 2017, these older trucks require a diesel particulate filter).*

2. RATE REGULATION

The provincial government has legislated initial minimum rates governing container trucking services and fuel surcharges¹². All container trips within the Lower Mainland are now covered by minimum rates, whether the container being moved is loaded or empty. This includes on-dock and off-dock moves by employee drivers and independent operators.

The initial minimum rate for employee drivers:

- paid by the hour is \$25.13 or \$26.28 *
- paid by the trip is \$40

The initial minimum rate for independent operators:

- paid by the hour is \$50.13 or \$51.28 *
- paid by the trip ranges from \$112 to \$224 for on-dock trips and \$100 to \$150 for off-dock trips (rates vary according to point of origin and destination)

While trucking companies can decide whether to pay a driver by the trip or by the hour and can have a mix of hourly and per trip drivers, they are prohibited from paying an individual driver a combination of hourly and per trip rates.

The regulations also provide for trucking companies to pay fuel surcharges to independent operators. The fuel surcharge is established by a formula which reflects diesel price fluctuations. For truckers who purchase fuel at a discount, the surcharge will be based on the actual price of the discounted fuel.

3. OVERSIGHT & ENFORCEMENT

A key component of the new legislation is the establishment of an independent B.C. Container Trucking Commissioner¹³. It is intended that the Commissioner will proactively resolve issues before they become critical. An industry advisory committee must be established by the Commissioner (the legislation does not provide for the composition and mandate of the committee).

The Commissioner has broad powers to ensure compliance with the regulatory regime.

The Commissioner has the power to:

- issue additional licences, including determining the mandatory and desirable criteria for granting licences
- establish minimum rates of pay and fuel surcharges
- order a trucking company to comply with any provision of the legislation or with the licence obligations
- conduct audits and investigations to ensure compliance
- impose penalties ranging from suspending a licence and imposing administrative fines to cancelling a licence
- enter into information-sharing agreements with Port Metro Vancouver and the federal government

12. *The Province may repeal these rates and the Commissioner may establish new ones. On January 28, 2015 the Province announced it would make adjustments to the rate structure including removing the \$50 rate for short trips, the \$40 trip rate for employee drivers and the hourly rates for independent operators (thereby requiring trucking companies pay employee drivers by the hour and independent operators by the trip). As of publication, the Regulations have not been amended.*

13. *The provincial government has the authority to appoint a Commissioner (and up to two Deputy Commissioners). Andy Smith was appointed Commissioner, effective February 16, 2015; OIC No. 062, February 16, 2015.*

* if > 2,340 hours of service

NON-REGULATORY MEASURES

The port and container terminals have implemented a number of other operational measures including:

- extended hours at three container terminals, five nights a week
- GPS monitoring of all truck movements
- wait-time payments for delays beyond 90 minutes (payable by the container terminal to the trucking company; trucking company must pass on 100% of the remuneration to independent operators)

Work is underway to develop a common data interface, including a common reservation system for container terminals.





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