



NORTHWEST ENVIRONMENTAL DEFENSE CENTER

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July 15, 2013

SUBMITTED VIA EMAIL TO: povcommissioners@portvanusa.com

Board of Commissioners
Port of Vancouver USA
3103 NW Lower River Road
Vancouver, WA 98660

RE: Comments Regarding the Port of Vancouver's Proposed Lease to Tesoro Savage for a Crude Oil Transport Terminal

Dear Mr. Jerry Oliver, Mr. Brian Wolfe, and Ms. Nancy Baker:

The Northwest Environmental Defense Center ("NEDC") submits the following comments regarding the lease proposal from Tesoro Savage (collectively, "Tesoro") to the Port of Vancouver ("Port") for a crude oil train and marine terminal ("Terminal"). NEDC is a nonprofit environmental organization dedicated to protecting and conserving the environment and natural resources of the Pacific Northwest. The construction and operation of the Terminal will impact many of NEDC's members and supporters. Specifically, NEDC is concerned about the adverse environmental impacts and irreparable harm to the surrounding community that is likely to result from construction and operation of the proposed Terminal.

In considering this lease, the Board of Commissioners ("Commissioners") for the Port of Vancouver has the opportunity to define the future for itself and surrounding communities. It is also the final and only opportunity for the Commissioners to evaluate independently the proposed Terminal. Tesoro and other project proponents claim the Terminal will provide an economic boost to the region and will create "family wage jobs." The Commissioners must critically review this claim and weigh it against the many other factors at issue here. For example, the details of any potential benefits from the Terminal are far from clear. In contrast, the threat the Terminal would pose to the health and safety of surrounding communities as well as to the natural resources of the region are real and well known. Moreover, the Commissioners should reject any argument that denying a lease would somehow prevent future economic development of the Port.

NEDC urges the Port to deny Tesoro's request for a lease to build and operate the Terminal. At the very least, NEDC hopes the Commissioners recognize the magnitude of the impacts likely to result from the proposed Terminal, and in turn give extra scrutiny in analyzing whether authorizing the lease is the proper next step.

Background

Transport of crude oil by rail has been on the rise in recent years.¹ Specifically, North Dakota's Bakken shale oil shipments are expected to exceed 800,000 barrels per day by the end of this year, which would be a tenfold increase since August, 2011. Half of North Dakota's oil production is now transported by rail, and projects are currently underway to provide additional infrastructure to ship more. The number of rail cars carrying crude oil increased from 9,500 in 2008 to 97,000 in the first quarter of this year. Trains generally transport tanker cars carrying only crude oil, "unit trains," that become a moving above-ground pipeline.

Tesoro's proposed Terminal would become the largest crude oil transfer terminal in the Northwest. The Terminal would have the capacity to receive 380,000 barrels of crude oil each day from rail lines that travel along the Columbia River. At the June 27, 2013 Commissioners' Meeting, Tesoro explained that the Terminal would start with one train per day, easily increase to two trains per day, and expects even further growth given current oil production and the need for transportation options. The Port is currently a lead shipper of wind turbine components and other cargo. Tesoro's proposed Terminal would most certainly transform the Port and its impact on surrounding communities.

Discussion

The proposed Terminal represents a major threat to the health and safety of citizens in surrounding communities. The Terminal also constitutes a threat to our environment, especially the Columbia River. Construction and operation of the Terminal would dramatically increase the risk of a spill or accident. This risk itself is a major negative impact weighing against the proposed lease. Given that later permit review processes will preempt any oversight by state or local entities, the Commission should seize this opportunity to review the lease, carefully analyze the likely impacts to the surrounding community and environment, and consider whether the Terminal would be consistent with the Port's mission statement and strategic goals.

I. The risk of a spill or accident and the likely devastating results counsel against authorizing Tesoro's proposed lease.

The transport of crude oil by rail is simply not safe. The recent devastating accident in Canada demonstrates that the risk of catastrophic harm associated with the transport of crude oil by rail can never be completely eliminated. Early in the morning on July 6, 2013, seventy-three rail cars carrying pressurized crude oil derailed and set off a series of explosions in the small lakeside community center of Lac-Mégantic, Quebec. The train was carrying crude oil from North Dakota's Bakken shale.² At least five people died and that toll is expected to rise, as at least 40 more are still missing. The explosion also destroyed 30 buildings and the environmental impacts are yet to be assessed.

¹ See, e.g., National Geographic Daily News, *Oil Train Tragedy in Canada Spotlights Rising Crude Transport by Rail* (July 8, 2013), <http://news.nationalgeographic.com/news/energy/2013/07/130708-oil-train-tragedy-in-canada/> (attached hereto as "Exhibit 1").

² See Exhibit 1.

The incident in Canada, although devastating, is not the only recent rail accident involving fossil fuels. In March of this year in Minnesota, a mile-long train hauling oil from Canada leaked 30,000 gallons of crude (about 715 barrels) after 14 cars derailed.³ In 2009, thirteen train cars carrying ethanol derailed in Cherry Valley, Illinois, creating a fire that killed one person at a rail crossing, injured seven, forced the evacuation of 600 homes, and resulted in \$8 million in damages.⁴

Older oil tank cars have proven to be unfit for the transport of crude oil. A 2009 report by the National Transportation Safety Board about the Cherry Valley, Illinois derailment described the design of such older oil tank cars as “inadequate” and found the design “made the cars subject to damage and catastrophic loss of hazardous materials.”⁵ It is unclear whether the cars used for the Tesoro project would be of the older version or whether any new designs significantly reduce the safety risks. The Port should seek answers to crucial questions like this before considering the proposed lease. If the Commissioners authorize the lease, the Commissioners can and should condition it on Tesoro using only newer, safer models of oil tank rail cars.

Despite Tesoro’s proclaimed “not one drop” policy, the risk of an oil spill or accident at the proposed Terminal is a reality that cannot be eliminated by even the most stringent safety measures. Even if the risk of an oil spill is low, the effect on the environment is likely to be catastrophic, including adverse impacts to air and water quality.⁶

Moreover, the Commissioners should not rely on Tesoro’s assurances. Tesoro has a history of poor safety and non-compliance with environmental regulations. Take, for example, the explosion at Tesoro’s Anacortes refinery in 2010 that killed seven people.⁷ The Washington Department of Labor and Industries determined the explosion was entirely preventable, and cited Tesoro for 44 workplace violations.⁸ Despite Tesoro’s verbal assurances at the June 27, 2013 Commissioners’ Meeting that the company has addressed its failures and improved safety and compliance operations, the U.S. Chemical Safety Board’s investigation of the 2010 accident is ongoing and could reveal further inadequacies.⁹

The Commissioners should require a demonstration from Tesoro of the specific human safety assurances that will be implemented. The Commissioners should also request detailed information regarding Tesoro’s spill readiness plans for not only the Terminal, but also the transport along rail lines. The Commission should then closely scrutinize any such plans.

³ See Huffington Post, *Minnesota Oil Spill: Canadian Train Derails, Spilling 30,000 Gallons of Crude in U.S.* (March 27, 2013), http://www.huffingtonpost.com/2013/03/28/minnesota-oil-spill_n_2967118.html (attached hereto as “Exhibit 2”).

⁴ National Transportation Safety Board, *Accident Report: Derailment of CN Freight Train U70691-18 With Subsequent Hazardous Materials Release and Fire* (June 19, 2009) (“NTSB Accident Report”), available at <http://www.nts.gov/doclib/reports/2012/RAR1201.pdf>.

⁵ See NTSB Accident Report at page viii.

⁶ See CTV News, *Environmental impact of Lac-Megantic disaster still unclear* (July 9, 2013), <http://www.ctvnews.ca/canada/environmental-impact-of-lac-megantic-disaster-still-unclear-1.1359425> (attached hereto as “Exhibit 3”).

⁷ See Seattle Times, *State declares Tesoro blast was preventable* (Oct. 5, 2010), http://seattletimes.com/html/localnews/2013070502_tesoro05m.html (attached hereto as “Exhibit 4”).

⁸ *Id.*

⁹ See Mother Jones, *Agency That Investigates Plant Explosions “Grossly Mismanaged”* (April 18, 2013), <http://www.motherjones.com/politics/2013/04/chemical-safety-board-texas-explosion> (attached as “Exhibit 5”).

The Terminal will bring with it significant risk and potential costs for the Port. For example, the Port would likely need to implement improved safety response teams to address the increased risk to other entities leasing space within the Port. Such measures represent additional costs to the Port that Tesoro has failed to address in its proposed lease. The transport of crude by rail is also a safety concern for the communities through which these trains will travel. Jim Hall, a transportation consultant and former chairman of the National Transportation Safety Board, has explained that transport of crude by rail “is good for business for the rails and bad safety for the public” because, *inter alia*, “[r]ailroads travel through population centers.”¹⁰

NEDC is also highly concerned about the lack of regulatory review over rail movements of oil. Our concerns are compounded by the fact that once the Port accepts the lease agreement with Tesoro, it will lose any oversight of the activities at the Terminal.

Transport of crude oil by rail has come so swiftly that it has largely bypassed public debate on potential safety issues.¹¹ Railroad executives claim the impact of train spills would be lesser than a pipeline spill. The risk of a train spill, however, was six times greater than a pipeline incident between 2004 and 2012.¹² Unlike pipelines that can be built to avoid population centers such as Vancouver and fragile ecosystems like the Columbia River and its tributaries, transport by rail depends on existing infrastructure that often runs directly through communities and alongside rivers. The growing use of rail to transport crude magnifies the safety questions.

Yet the Commissioners need not be concerned with the debate over transport by rail or pipeline,¹³ but rather whether the Port is ready and willing to place itself, the surrounding communities, and the natural resources of the region at a heightened risk of disaster. The decision to use rail lines is not a choice based on increased safety: transport of crude oil by rail and pipeline each carry their own safety risks.¹⁴ The lack of an existing infrastructure to connect the Bakken shale fields, combined with high crude oil prices, has forced oil producers to instead turn to rail.¹⁵

The question for the Port is whether or not to lease this particular Terminal that would rely on crude by rail. The alternative for the Commissioners is to disallow crude oil to be transported by rail and marine ships in the Port of Vancouver. There is no pipeline alternative. The trains proposed by Tesoro would travel along the scenic Columbia River and cut directly through Vancouver, creating a risk to the communities and environment in its path. While the national debate may be whether to transport crude oil by train or pipeline, the local debate now

¹⁰ See Exhibit 2.

¹¹ See Exhibit 1.

¹² See Bloomberg, *Pipelines Spill Three Times as Much Oil as Trains* (May 14, 2013), available at <http://www.bloomberg.com/news/2013-05-14/pipelines-spill-three-times-as-much-oil-as-trains-ia-says.html> (attached hereto as “Exhibit 6”).

¹³ See New York Times, *Deadly Derailment in Quebec Underlines Oil Debate* (July 7, 2013), http://www.nytimes.com/2013/07/08/world/americas/deadly-derailment-in-quebec-underlines-oil-debate.html?_r=0 (attached hereto as “Exhibit 7”).

¹⁴ See Exhibit 1.

¹⁵ See Draft Environmental Impact Statement, Keystone XL Project (March 2013), available at <http://keystone-pipeline-xl.state.gov/documents/organization/205719.pdf>.

facing the Commission is whether the Port of Vancouver is willing to put its surrounding communities and natural resources at risk by signing on to a ten year lease.

II. Reliance on later permit processes to safeguard impacts to the community and environment is misplaced.

If the Commissioners decide to approve Tesoro's proposed lease, Washington's Energy Facility Site Evaluation Council ("EFSEC") would control the permitting process for the Terminal. *See* RCW 80.50.040. EFSEC's procedures would preempt any oversight by the Commissioners. *See* RCW 80.50.110. At the June 27, 2013 meeting, the Commissioners indicated that EFSEC's permitting procedures should allay any concerns about the impact on the environment or the community. EFSEC's review process, however, will only be triggered if and when the Commission approves Tesoro's proposed lease. Importantly, EFSEC's considerations will be limited in scope, as compared to the factors the Commissioners may consider. *Compare* RCW 80.50.040 (delineating the scope of EFSEC's authority, which is limited to impacts of the facility itself) *with* Port of Vancouver USA, *Strategic Plan 2013-2022* ("Strategic Plan") (explaining that the Port is concerned with not only the impacts of particular facilities, but "efficient management of port facilities, commitment to environmental stewardship, and collaboration with the community and local government partners"). Because the later in time EFSEC review process will preempt any further review by the Commissioners and is more limited than the Commissioners' review of the proposed lease, the Commissioners must not forego this opportunity to ensure that this Terminal is the correct direction for the Port.

The real question here is whether the Commissioners believe Tesoro's proposed Terminal is an appropriate option for the Port. Before passing on the important lease question and handing authority to EFSEC to proceed with permitting, the Commission should develop its own criteria and apply such criteria to determine whether authorize the lease to Tesoro for the proposed Terminal. The criteria should be consistent with the Port's Strategic Plan, which states that one of the Port's goals is to "ensure longevity of economic diversity and funding through a sustainable, healthy mix of cargo, tenants and revenue generation." The criteria should also consider the Port's mission, to "provide economic benefit to our community through leadership, stewardship and partnership in marine and industrial development." Given that oversight by the Commission will be preempted by EFSEC, reliance on EFSEC's permit review process to address concerns about impacts to the environment or community would be contrary to the Port's commitment to leadership and stewardship.

Conclusion

For the reasons set forth above, the Commission must take advantage of this opportunity to review Tesoro's proposed lease in light of its mission statement and Strategic Plan. Given the likely adverse impacts of the Terminal, the Commissioners should deny the proposed lease. Short of a denial, the Port should host additional public meetings to consider the substantial negative effects that a crude oil terminal is likely to have on the community and surrounding environment.

This may be one of the most important decisions this Commission will ever have to make. Moving forward with the proposed Terminal will likely change the Port, and the

community, forever. Thus, the Commissioners must ask the important and difficult questions now. The Commission must not miss this opportunity, only to regret it later.

Sincerely,

A handwritten signature in black ink, appearing to read "Marla Nelson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Marla Nelson
Legal Fellow