

Port of Vancouver/energy facility site evaluation Council Tesoro Savage Vancouver energy distribution terminal introductory and scoping comments application number 2013 -- 01 Docket number EF --131590

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ENERGY FACILITY SITE
EVALUATION COUNCIL**I introductory comments**

welcome to Vancouver
reasonable accommodation- thank you

 John Karpinski -- credentials

Who's Who in American Law (at least) 2003 to present

Won 2 Washington Supreme Court cases on the same day -- 9/9/99

- *Concerned Ratepayers Ass'n v. Public Utility Dist. No. 1 of Clark County, Wash.*, 138 Wn.2d 950, 983 P.2d 635 (Wash. 1999)
- *Currens v. Sleek*, 138 Wn.2d 858, 983 P.2d 626 (Wash. 1999)

Defeated Williams GSX natural gas pipeline through San Juan Co underwater nature preserve 2004

II Objections/scoping comments for the record

- My comments focus on SEPA, but equally relevant to NEPA

A) PORT CANNOT TAKE ANY ACTION THAT WILL LIMIT THE CHOICE OF REASONABLE ALTERNATIVES DURING SEPA REVIEW

I) object to the Port of Vancouver entering into a lease with Tesoro prior to final EIS as a violation of WAC 197 -- 11 -- 070

WAC 197-11-070 Limitations on actions during SEPA process

(1) Until the responsible official issues a final determination of nonsignificance or final environmental impact statement, **no action concerning the proposal shall be taken** by a governmental agency that would:

- Have an adverse environmental impact; or
- Limit the choice of reasonable alternatives.**

B) LEASES NOT EXEMPT FROM SEPA

WAC 197 -- 11 -- 800 (5)(c)Categorical exemptions

(5) **Purchase or sale of real property.** The following real property transactions by an agency shall be exempt:

(c) The lease of real property **when the use of the property for the term of the lease will remain essentially the same as the existing use**, or when the use under the lease is otherwise exempted by this chapter.

C) PORT LEASE IS AN ACTION UNDER SEPA...A PUBLIC ACTION.

1) lease is an action under WAC 197-11-704

(1) "Actions" include, as further specified below.

(a) New and continuing activities (including projects and programs) entirely or partly financed, assisted, conducted, regulated, licensed, or approved by agencies;

(b) New or revised agency rules, regulations, plans, policies, or procedures; and

(c) Legislative proposals.

(2) Actions fall within one of two categories:

(a) **Project actions.** A project action involves a decision on a specific project, such as a construction or management activity located in a defined geographic area. Projects include and are limited to **agency decisions to:**

(i) License, fund, or undertake any activity that will directly modify the environment, whether the activity will be conducted by the agency, an applicant, or under contract.

(ii) Purchase, sell, **lease**, transfer, or exchange natural resources, including **publicly owned land, whether or not the environment is directly modified.**

2) Lease is a public proposal under WAC 197-11-784

"Proposal" means a proposed action. A proposal includes both **actions** and regulatory decisions of **agencies** as well as any actions proposed by applicants.

D) NO ACTION ALTERNATIVE REQUIRED BY SEPA, obviated by lease

WAC 197-11-440 EIS contents

(5) Alternatives including the proposed action.

(a) This section of the EIS describes and presents the proposal (or preferred alternative, if one or more exists) and alternative courses of action.

(b) Reasonable alternatives shall include actions that could feasibly attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation.

(i) The word "reasonable" is intended to limit the number and range of alternatives, as well as the amount of detailed analysis for each alternative.

(ii) The "no-action" alternative shall be evaluated and compared to other alternatives.

(iii) Reasonable alternatives may be those over which an agency with jurisdiction has authority to control impacts either directly, or indirectly through requirement of mitigation measures.

(c) This section of the EIS shall:

(i) Describe the objective(s), proponent(s), and principal features of reasonable alternatives. Include the proposed action, including mitigation measures that are part of the proposal.

(ii) Describe the location of the alternatives including the proposed action, so that a lay person can understand it. Include a map, street address, if any, and legal description (unless long or in metes and bounds).

(iii) Identify any phases of the proposal, their timing, and previous or future environmental analysis on this or related proposals, if known.

(iv) Tailor the level of detail of descriptions to the significance of environmental impacts. The lead agency should retain any detailed engineering drawings and technical data, that have been submitted, in agency files and make them available on request.

(v) Devote sufficiently detailed analysis to each reasonable alternative to permit a comparative evaluation of the alternatives including the proposed action. The amount of space devoted to each alternative may vary. One alternative (including the proposed action) may be used as a benchmark for comparing alternatives. The EIS may indicate the main reasons for eliminating alternatives from detailed study.

(vi) Present a comparison of the environmental impacts of the reasonable alternatives, and **include the no action alternative**. Although graphics may be helpful, a matrix or chart is not required. A range of alternatives or a few representative alternatives, rather than every possible reasonable variation, may be discussed.

(vii) Discuss the benefits and disadvantages of reserving for some future time the implementation of the proposal, as compared with possible approval at this time. The agency perspective should be that each generation is, in effect, a trustee of the environment for succeeding generations. Particular attention should be given to the possibility of **foreclosing future options by implementing the proposal**.

E) Lease in violation of SEPA is an *Ultra vires* act

Noel v. Cole, 98 Wash. 2d 375, 655 P.2d 245 (1982) Gov't approval issued in violation of SEPA is ultra vires

F) SCOPING NOTICE FROM EFSEC FAILS TO REQUIRE COMPREHENSIVE REVIEW

1) fails to include impacts including, but not limited to

- Exporting oil impacts
 - Only need for a deep water port is for oil export
 - If claim only domestic use, put condition that any change to export must go through another full EFSEC review, SEPA and NEPA EIS
- Extra jurisdictional impacts
- WAC 197 -- 11 -- 060 4 b
 - Includes entire transportation system
- indirect impacts including the precedent of future dirty energy related projects
- WAC 197 -- 11 -- 060 4 d
- cumulative impacts
- WAC 197 -- 11 -- 060 4 d
- catastrophic impacts...like explosions/dead people/spills who live everywhere the rail line, and river/ocean spills
- WAC 197- 11 -794

◦ (1) "Significant" as used in SEPA means a **reasonable likelihood of more than a**

moderate adverse impact on environmental quality.

(2) Significance involves context and intensity (WAC 197-11-330) and does not lend itself to a formula or quantifiable test. The context may vary with the physical setting. Intensity depends on the magnitude and duration of an impact.

The severity of an impact should be weighed along with the likelihood of its occurrence. **An impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe if it occurred.**

2) fails to discuss required alternatives

- No action/no lease alternative
- Other potential uses that create equal or greater # jobs at a lesser environmental impact

G.Object to the failure to circulate the EFSEC scoping notice to the mailing list the port of Vancouver

III Objections Re: Port of Vancouver -objection to participation of Jerry Oliver in any proceedings re: project.

A) Must raise procedural objections as soon as possible.

B) Jerry Oliver has a pecuniary interest in project and precedent of project

1) Commissioners agree to tie their salaries to Port of Vancouver revenues

As stated in the Columbian,:

By Aaron Corvin, Columbian port & economy reporter

Published: October 22, 2013, 7:52 PM

The Port of Vancouver's elected commissioners unanimously approved a resolution Tuesday that provides commissioners salary increases tied to the port's financial performance.

Currently, a port commissioner receives a salary of \$635 per month — or \$7,620 annually — which is adjusted for inflation every five years. Under the new policy, those salaries would rise further based on increases in the port's operating revenue. If, for example, the port reaches revenue of \$35 million to \$50 million, commissioners could receive \$800 per month, or \$9,600 annually. If revenue hit the \$50 million to \$70 million range, pay would increase to \$1,000 per month, or \$12,000 annually, and so on. Conversely, dropping revenue would reduce pay.

The port anticipates operating revenue of \$34.08 million for 2014, so a pay raise would not kick in yet under the proposed change.

2) Jerry Oliver is running opposed for reelection.