
From: Kris Eklove <kris@eriksonlaw.com>
Sent: Thursday, October 31, 2013 9:04 AM
To: EFSEC (UTC)
Subject: FW: Tesoro Savage App. No. 2013-01 Docket No. EF-131590
Attachments: TESORO-SAVAGE.L01.pdf

Categories: Comment, Blue Category

Resent to corrected electronic address.

From: Kris Eklove [mailto:kris@eriksonlaw.com]
Sent: Wednesday, October 30, 2013 5:03 PM
To: 'efsec@ute.wa.gov'
Subject: Tesoro Savage App. No. 2013-01 Docket No. EF-131590

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Mr. Posner:

Please see the attached correspondence from attorney Mark A. Erikson, pertaining to the matter referenced above.

Thank you,

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October 30, 2013

E-MAIL & CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Stephen Posner
Interim EFSEC Manager
Energy Facility Site Evaluation Council
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Olympia, WA 98504-3172
E-mail: efsec@ute.wa.gov

**Re: Determination of Significance Scoping Notice
Tesoro Savage Vancouver Energy Distribution Terminal
Application No. 2013-01
Docket No. EF-131590**

Dear Mr. Posner:

This letter constitutes comment to the above-referenced determination, submitted to influence the outcome of decision, and to perfect the record for review.

We submit that any evaluation of impacts to global climate which are alleged to result from the eventual combustion or other use of fuels transported through the proposed facility is both contrary to law and unconstitutional. Under the *State Environmental Policy Act*,¹ cumulative impacts should not be considered which are merely speculative in nature.² Where quantification of impacts is limited by unknown factors, consideration “would be speculative and could lead to a substantially inaccurate evaluation of environmental effects.”³ While “climate change” is decried as a *known fact* in political forums, there is no basis to *quantify* speculative impacts of eventual fuel combustion or use upon the *globe* or any portion thereof.

¹Chapter 43.21C.010 RCW.

²*Boehm v. City of Vancouver*, 111 Wash.App. 711, 720, 47 P.3d 137, 142 (2002); citing WAC 197-11-060(4)(a) (SEPA “require[s] the consideration of ‘environmental’ impacts . . . with attention to impacts that are likely, not merely speculative.”); *see also Tugwell v. Kittitas County*, 90 Wash.App. 1, 12, 951 P.2d 272 (1997).

³*City of Des Moines v. Puget Sound Reg'l Council*, 98 Wash.App. 23, 108 Wash.App. 836, 854, 988 P.2d 27, 37 (1999), *review denied*, 140 Wash.2d 1027, 10 P.3d 403 (2000).

Stephen Posner, Interim EFSEC Manager
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The imposition of conditions intended to mitigate speculative impacts upon global climate would deprive the applicants of their rights to substantive due process, and compensation for property taken in the public interest.⁴ The Washington Supreme Court holds that permit denial violates substantive due process if the denial is arbitrary and capricious.⁵ Moreover, conditions are unconstitutional which are “unduly oppressive on the land owner.”⁶ We submit that even a requirement to *study* unquantifiable global impacts is both arbitrary and capricious, and unduly burdensome upon the applicant. A condition requiring mitigation would be facially unconstitutional.

Sincerely,



Mark A. Erikson⁷
Attorney at Law

MAE/ke
TESORO-SAVAGE.L01.wpd

⁴Protected by the 5th and 14th amendments to the U.S. Constitution, and article 1, sections 3 and 16 of the Washington State Constitution.

⁵*Lutheran Day Care v. Snohomish County.*, 119 Wash.2d 91, 125, 829 P.2d 746, 763 (1992); citing *R/L Associates, Inc. v. Seattle*, 113 Wash.2d 402, 412, 780 P.2d 838 (1989).

⁶*Presbytery of Seattle v. King County*, 114 Wash.2d 320, 330, 787 P.2d 907, 913 (1990).

⁷Neither Mark A. Erikson nor Erikson & Associates, PLLC, have any relation to the applicants.