

EXHIBIT 11



August 28, 2013

Via U.S. Mail and Email

Stephen Posner, Interim EFSEC Manager
Jim LaSpina, Siting Specialist
Energy Facility Site Evaluation Council
1300 S. Evergreen Park Drive SW
Olympia, WA 98504-3172
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jlaspina@utc.wa.gov

Re: EFSEC Jurisdiction Over Westway Crude-By-Rail Proposal In Grays Harbor

Dear Mr. Posner and Mr. LaSpina:

Almost four months ago, I wrote on behalf of the Quinault Indian Nation asking the Energy Facility Site Evaluation Council (“EFSEC”) to assert its jurisdiction over certain crude-by-rail proposals in Grays Harbor, Washington. EFSEC decided it did not have jurisdiction over two of these projects—Westway Terminal Services and Imperium Terminal Services—and those projects have proceeded under City of Hoquiam and Department of Ecology jurisdiction under the Shorelines Management Act. I write again to urge you to reconsider your position with respect to Westway based on information that has recently come to light.

EFSEC has jurisdiction over facilities that have “the capacity to receive more than an average of fifty thousand barrels per day of crude or refined petroleum ... which has been or will be transported over marine waters” RCW 80.50.020(12)(d). While Westway has publicly stated that it plans to operate at only 26,300 barrels of crude oil a day (9.6 million barrels per year), that is not the relevant question. Instead of asking about operational intent, the statute requires EFSEC to investigate the actual capacity of the proposed facility and assert jurisdiction if the actual capacity exceeds an average of 50,000 barrels/day.¹

¹ Under the plain language of the statute, Westway’s proposal meets that definition. Westway’s facility will have the capacity to store 800,000 barrels of crude oil in four large tanks, and Westway’s facility will have the capacity to unload a conservative estimate of 54,264 barrels of crude oil a day from rail tank cars. Either of these measurements methods puts Westway’s proposal under EFSEC jurisdiction.

Stephen Posner, Interim EFSEC Manager
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Documents recently provided by Westway during the pending appeal of its permit before the Shorelines Hearings Board illustrate precisely why EFSEC must look at actual capacity, not currently stated intentions. These emails make it clear that Westway has planned for months to ship more than 50,000 barrels per day from its Grays Harbor facility, and the company has been proceeding in segmented “phases” that avoid EFSEC jurisdiction and potentially greater SEPA review.

As you know, Westway’s original proposal was for two, 200,000 barrel crude oil tanks. When Westway changed its plans to encompass four, 200,000 barrel tanks, EFSEC properly asked whether this doubling of storage capacity brought Westway within its jurisdiction. Westway’s response was that “[t]he change from two to four tanks is being made to provide additional storage capacity so that the terminal can continue to receive product in the event vessels/barges are delayed arriving at the terminal.” Letter from Ken Shoemake, Westway, to Sally Toteff, DOE, and Jim LaSpina, EFSEC (Dec. 4, 2012).

The attached emails, however, show that Westway has every intention of using all four tanks for active shipping, not merely extra storage capacity—doubling the annual oil throughput from 9.6 million barrels to 19.2 million barrels, or from an average of 26,300 barrels per day to an average of 52,600 barrels per day. These emails outline additional steps the company may take “as soon as SEPA clears,” talk about an undisclosed “phase 2” of the project, discuss a fifth storage tank, and mention expansion into the adjacent woodchip site. In short, these emails erase any doubt that Westway will receive and ship more than 50,000 barrels per day on average, and yet the company has presented its project in a way that would avoid EFSEC jurisdiction and a more thorough environmental review.

On January 31, 2013, Westway leadership wrote of potential customers that wanted “to secure the whole 9.6 million barrels of thru put with two tanks,” as they had “70,000 bbls a day of Bakken locked up right now.” Email from Gene McClain, President, Westway Terminal Company, Re: Grays Harbor Engineering status (Jan. 31, 2013). The response from another Westway manager was “I told ken last week as soon as SEPA clears to submit another for additional 9.6 bbl so we will have it in the works.” Email from Robbie Johnson, Vice President Engineering (Jan. 31, 2013) (emphasis added).

Two months later, Mr. Johnson continued to discuss doubling the amount of crude oil to be shipped through the Westway facility (9.6 million barrels per year for each of two unnamed customers), in addition to a future expansion:

I think we should offer them 9,600,000 bbl thru put per year, which is the permit amount for 2 tanks That would allow [redacted] to have 9,600,000 bbl for their 2 tanks and we could apply for additional thru put with DOE at any time to

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increase [redacted] expansion potential. ... [T]he overall 5 tank projects cost will go down substantially due to shared infrastructure and economy of scale. Real substantially! Grays Harbor Cash Cow substantially!

Email from Robbie Johnson, Re: [redacted] Cold Lake crude estimate (March 24, 2013). *See also* Email from Gene McClain, Re: Westway Board Call on Grays Harbor (May 14, 2013) (“Guess we will need to talk about phase 2 as well.”) (emphasis added); *id.* (“we can certainly discuss where we are on the phase 2 process with [redacted] and the potential to secure additional property adjacent to the current site.”) (emphasis added); *id.* (call may “briefly discuss the next phases”) (emphasis in original); *id.* (mentioning “woodchip site lease” for expansion).

In an email discussing the appeal of its Shorelines Permit, Geoff Roberts, SuperOx Holdings LLC, noted that the appeals would affect the company’s future expansion and asked whether Westway should take steps to go forward with crude oil shipment without any further regulatory review:

Anything we do now, will be the starting point on the next expansion unless we can somehow tie them up on a future expansion with something here. ... If the conversion of 2 tanks existing Methanol tanks can be done without a shoreline permit, can we/should we move forward on that option as both a hedge as well as additional leverage against the intervenors and retain the option for [redacted].

Email from Geoff Roberts, SuperOx Holdings LLC, Re: Grays Harbor Shoreline permit appeals—silver lining? (May 22, 2013) (emphasis in original).

To be sure, EFSEC is in an unusual position now, given the issuance and pending appeal of Westway’s Shorelines Permit and SEPA MDNS. However, it is immaterial that there are permits and appeals pending because this is clearly a project within EFSEC jurisdiction. Once EFSEC asserts jurisdiction—as it must—the existing Shoreline permits can be vacated as issued without jurisdiction and the existing appeals of those permits can then be dismissed. We again ask you to assert jurisdiction over the Westway Terminal proposal in Grays Harbor.

Sincerely,



Kristen L. Boyles
Attorney for Quinault Indian Nation

Stephen Posner, Interim EFSEC Manager
Jim LaSpina, Siting Specialist
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cc via email only:

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Alan Bogner
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alan.bogner@ora.wa.gov

From: McClain, Gene (WGI New Orleans) <GeneM@westway.com>
Sent: Tuesday, May 14, 2013 9:02 AM
To: Johnson, Robbie (WGI New Orleans); Ooi, Liang Wee (WGI New Orleans)
Subject: FW: Westway Board Call on Grays Harbor (10:00 am EST; 9:00 am CST)
Attachments: image001.png; image002.png

Guess we will need to talk about phase 2 as well.

Gene McClain

CEO
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Please consider the environment before printing this email

From: Bo Lerenius [<mailto:bo.lerenius@telia.com>]
Sent: Tuesday, May 14, 2013 10:55 AM
To: Darden, Alex
Cc: McClain, Gene (WGI New Orleans); Tucker Jeffrey(tuckerjeffrey@yahoo.com); Geoffrey Roberts (gdrobertsjr@hotmail.com); Matsumoto Glen
Subject: Re: Westway Board Call on Grays Harbor (10:00 am EST; 9:00 am CST)

Hi Alex
I will call in on Monday, May 20 at 16.00 CET.
I understand the call is about the [REDACTED] contract in Gray's Harbor.
Will we also discuss phase 2 of the project?
Regards
Bo

Sent from my iPad

On 14 May 2013, at 17:50, "Darden, Alex" <alex.darden@eqtpartners.com> wrote:

Gentlemen, I just resent the invitation for the call next Monday. Apologies if you received it last week and now again, but some folks did not receive it when I sent it out last week.

Alex

-----Original Appointment-----

From: Darden, Alex
Sent: Tuesday, May 14, 2013 11:49 AM
To: genem@westway.com; Tucker Jeffrey (tuckerjeffrey@yahoo.com); bo.lerenius@telia.com; Geoffrey Roberts (gdrobertsjr@hotmail.com); Matsumoto Glen
Subject: Westway Board Call on Grays Harbor (10:00 am EST; 9:00 am CST)
When: Monday, May 20, 2013 10:00 AM-11:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where: BB: +18665396225x4574171768#... iPhone: 18665396225;;4574171768

From: Johnson, Robbie (WGI New Orleans) <RobbieJ@westway.com>
Sent: Sunday, March 24, 2013 6:25 PM
To: McClain, Gene (WGI New Orleans); Ooi, Liang Wee (WGI New Orleans); O'Donnell, Mark (WGI New Orleans)
Cc: Johnson, Robbie (WGI New Orleans)
Subject: ██████ Cold Lake crude estimate
Attachments: image001.jpg; image002.gif; ██████ Cold Lake Crude Estimate 2 and 3 Tanks, Rev 03-24-13.xlsx

I revised the ██████ estimate to include adders for handling the Cold Lake crude. ██████ seemed to understand they need 3 tanks rather than 2 so I extended the adders to the 3 tank scenario. If they elect to go with 2 tanks I can easily modify the estimate. The adders total \$2.6million and bring the 3 tank total to almost \$51million. ██████ has indicated they want to send 12 - 100 car trains per month. Their cars are 600 bbl so annual throughput would be 12 x 12 x 100 x 600 = 8,640,000 bbl. I think we should offer them 9,600,000 bbl thru put per year, which is the permit amount for 2 tanks, but they need the 3rd tank for transportation logistics. That would allow ██████ to have 9,600,000 bbl for their 2 tanks and we could apply for additional thru put with DOE at any time to increase ██████ expansion potential.

I would like to run this thru a tank revenue comparison spreadsheet that I previously set up but I need to modify it for 3 tank comparison rather than only 2. I'll try to get that done while traveling to NOLA in the morning. I've changed my schedule and will arrive there around 9:30am and be at the office around 10:15am.

Both ██████ estimates have been structured as stand-alone projects that include all required infrastructure. If the ██████ both sign based on our ROI on these estimates, the overall 5 tank project cost will go down substantially due to shared infrastructure and economy of scale. Real substantially! Grays Harbor Cash Cow substantially!

See you in the morning.

Robbie Johnson

Vice President Engineering
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From: McClain, Gene (WGI New Orleans) <GeneM@westway.com>
Sent: Thursday, January 31, 2013 5:44 AM
To: Johnson, Robbie (WGI New Orleans)
Subject: RE: Grays Harbor Engineering status
Attachments: image001.png; image002.png

I told her that was our plan. She is eager to beat [REDACTED] to the punch.

Gene McClain

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From: Johnson, Robbie (WGI New Orleans)
Sent: Thursday, January 31, 2013 7:42 AM
To: McClain, Gene (WGI New Orleans)
Subject: Re: Grays Harbor Engineering status

I told ken last week as soon as SEPA clears to submit another for additional 9.6M bbl so we will have it in the works.

Sent from my iPhone

On Jan 31, 2013, at 5:37 AM, "McClain, Gene (WGI New Orleans)" <GeneM@westway.com> wrote:

I spoke with [REDACTED] yesterday and I she said she want to be the first to sign so how much time did she have. I told her 1 week and she said she is working to get that done. They want to secure the whole 9.6 million barrels of thru put with two tanks. She indicated that the railroad gave them comfort yesterday and they have 70,000 bbls a day of Bakken locked up right now.

Gene McClain

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<image001.png> <image002.png>

Please consider the environment before printing this email

From: Johnson, Robbie (WGI New Orleans)
Sent: Thursday, January 31, 2013 7:32 AM
To: McClain, Gene (WGI New Orleans)
Subject: Re: Grays Harbor Engineering status

From: Geoff Roberts <GRoberts@superobox.com>
Sent: Wednesday, May 22, 2013 9:28 AM
To: McClain, Gene (WGI New Orleans); Darden, Alex
Subject: Re: Grays Harbor Shoreline permit appeals - silver lining?
Attachments: 44B87BE8-4473-4EBF-98E4-D2748711F891[12].png; image001.png; image002.png

A couple of concerns:

1. To be fair, I believe that expectation of an appeal was downplayed during the recent discussions even when the specific question was raised about the tribal intervention – it was described as something that we didn't know anything more about beyond the intervention itself. If we really believed that this was a likely outcome, it probably would have been prudent to tie up the best outside counsel for ourselves – but that is now water over the dam.
 1. I'm not sure how the joint approach works with Imperium since we may have conflicting desires at a certain point. However, I may be missing something in the details.
2. These types of intervenors have every incentive to drag this out as long as possible and slow play the administrative portion of the process. If they believe that we have a time constraint, they will move even slower. They have no clock and they know that we have a clock ticking. I have had to deal with similar entities when I works on the Portland General merger and it really boiled down to a hold-up for cash – but it had to be done under their schedule and they are experts at dragging things out and not spending money. Facts were never a concern for them and they could make whatever outrageous claim they desired without any repercussions. A week here, a week there, pretty soon it adds up to months.
 1. Anything we do now, will be the starting point on the next expansion unless we can somehow tie them up on a future expansion with something here. One potential thought that could work in our favor is their support for utilizing existing sites vs. new sites (this could trip up USD), but the Port will probably not support this.
3. If the conversion of 2 tanks existing Methanol tanks can be done without a shoreline permit, can we/should we move forward on that option as both a hedge as well as additional leverage against the intervenors and retain the option for [REDACTED] It is not as attractive, but something is better than nothing.

I will plan to share this with the balance of the board so that they are all informed.

Regards,

Geoff

Geoff Roberts
SuperOx Holdings LLC
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(713) 400-3805 (fax)
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Groberts@superobox.com


Efficiency Through Advanced Technology

From: <McClain>, Gene McClain <genem@westway.com>
Date: Wednesday, May 22, 2013 10:01 AM

From: Ooi, Liang Wee (WGI New Orleans) <liangwee.ooi@westway.com>
Sent: Tuesday, May 14, 2013 9:42 AM
To: McClain, Gene (WGI New Orleans); Johnson, Robbie (WGI New Orleans)
Cc: Masilla, Thomas (WGI New Orleans)
Subject: RE: Westway Board Call on Grays Harbor (10:00 am EST; 9:00 am CST)
Attachments: image001.png; image002.png

I can speak towards updating situation with [REDACTED]. Pushing them to get their logistics side more organized and in contact with rail company, shipping company etc. Then we have the meeting week after. Will talk to Mark once he had caught up with [REDACTED]

From: McClain, Gene (WGI New Orleans)
Sent: Tuesday, May 14, 2013 11:25 AM
To: Ooi, Liang Wee (WGI New Orleans); Johnson, Robbie (WGI New Orleans)
Cc: Masilla, Thomas (WGI New Orleans)
Subject: FW: Westway Board Call on Grays Harbor (10:00 am EST; 9:00 am CST)

Josh /Robbie,

We will need to be prepared to discuss where we are with [REDACTED] and others as well as the possibility to get the woodchip site lease or option for future.

Gene McClain

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From: McClain, Gene (WGI New Orleans)
Sent: Tuesday, May 14, 2013 11:24 AM
To: 'Darden, Alex'; Geoff Roberts; Bo Lerenius
Cc: Tucker Jeffrey(tuckerjeffrey@yahoo.com); Matsumoto Glen
Subject: RE: Westway Board Call on Grays Harbor (10:00 am EST; 9:00 am CST)

Yes the priority of the call is to review the Capex and the financial analysis for the [REDACTED] deal (which is close to being signed) but we can certainly discuss where we are on the phase 2 process with [REDACTED] and the potential to secure additional property adjacent to the current site.

Gene McClain

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