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August 18, 2015

Via U.S. Mail and E-Mail

Stephen Posner, EFSEC Manager
Energy Facility Site Evaluation Council
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RE: Ongoing SEPA and Other Permit Review of Tesoro-Savage Proposal:
New Information in Unredacted Lease

Dear Mr. Posner:

On August 6, 2015, as the result of separate state public records act litigation, the Port of Vancouver publically released, for the first time, a largely unredacted version of the lease signed with Tesoro-Savage for its proposed crude oil shipping terminal. The lease (Section 8, Use of Premises) provides that if the volume of oil handled at the Tesoro-Savage facility exceeds an average of 400,000 barrels of oil per day, then Tesoro-Savage has the right of first opportunity to ask the Port to expand the facility or to build a second facility.

Two aspects of this provision are central to EFSEC's environmental review and yet may be missing due to the previously redacted lease provisions. The first is the amount of oil contemplated as through-put for the proposed terminal. This is the first time that the public has been informed that Tesoro-Savage and the Port reasonably anticipated that the proposed facility could handle an average of 400,000 barrels per day; the average through-put capacity provided in Tesoro-Savage's application is 360,000 barrels per day. *See* Tesoro-Savage Application No. 2013-01 Supplement, Section 2.3.1.1, Facility Elements Included in the Application for Site Certification, p. 2-88 (Feb. 2014). To our knowledge, this 11% larger volume capacity is not the basis for the current environmental review or analysis in Tesoro-Savage's air and water permits. We ask EFSEC to ensure that its environmental analysis, as well as its calculations in its Clean Air Act and Clean Water Act permits, is based on the proposed facility's actual maximum capacity under its physical and operational design (which is apparently more than 400,000 barrels per day), rather than any anticipated operational limit.

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Second, an additional or expanded facility, as contemplated by the lease, changes the scope of SEPA review as it could be a reasonably foreseeable future action. SEPA regulations explicitly forbid division of a project to “avoid discussion of cumulative impacts.” WAC 197-11-060(5)(d). As the court stated in *Merkel v. Port of Brownsville*, 8 Wn. App. 844 (Wash. App. Div. 2 1973), “[t]he question, therefore, is whether the Port may take a single project and divide it into segments for purposes of SEPA and SMA approval. The frustrating effect of such piecemeal administrative approvals upon the vitality of these acts compels us to answer in the negative.” *Id.* at 850-51. It is not clear from the lease how seriously Tesoro-Savage and the Port considered an expanded terminal; we believe EFSEC should thoroughly investigate the extent of Tesoro-Savage’s commitment to an expanded facility, including whether the plans and design of the current terminal anticipate expansion or are designed to accommodate more crude oil than currently projected. It is within EFSEC’s discretion to analyze similar, reasonable foreseeable actions together in one EIS. WAC 197-11-060(3)(c). Clearly, one impact of the Tesoro-Savage proposal will be to “serve as a precedent for future actions,” WAC 197-11-060(4)(d), and this type of indirect impact must be considered in the draft Environmental Impact Statement, especially as the unredacted lease illustrates that a second project was already at least under consideration several years ago.

Thank you for your time and consideration as you prepare the draft Environmental Impact Statement and draft air and water permits.

Sincerely,



Kristen L. Boyles

*Attorney for Columbia Riverkeeper, Friends of the
Columbia Gorge, ForestEthics, Spokane
Riverkeeper, Sierra Club, Washington
Environmental Council, Climate Solutions, and
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cc: All parties to adjudication
ALJ Noble