

VOLKSWAGEN SETTLEMENT MAY HELP PORTS

German automaker Volkswagen (VW) has admitted to installing illegal software designed to understate vehicle emissions on its entire lineup of diesel cars sold in the United States. This acknowledgment of a violation of the federal Clean Air Act has resulted in a lawsuit and subsequent settlement by the company that could result in emissions-reducing investments at ports in the central Puget Sound.

In addition to providing consumer relief to owners of the affected VW automobiles along with a commitment to providing a \$2 billion investment into electric vehicle charging stations across the US, VW has agreed to a consent decree that will provide mitigation funding designed to offset nitrogen oxide emissions to regions most acutely affected by their violation. The State of Washington alone is eligible to receive \$112.7 million in mitigation funding.

According to the consent decree, mitigation funds can only be spent to improve or replace engines or equipment for equipment not already slated for replacement.



The consent decree also identifies ten categories for eligibility. In addition to transit and school buses, ferries and local trucks, other eligible categories include: shorepower for ocean going vessels, airport ground equipment, freight rail locomotives, forklifts or other cargo handling equipment and dray trucks. In fact, of the ten eligible categories, seven could provide benefits to ports or those companies that do business with them.

Details about how the state will prioritize fund requests for the mitigation funding are yet to be determined. Specific geographic parameters must also be defined (although the consent decree mandates mitigation funds be spent where the automobiles operated). The legislature is also expected to weigh in with its priorities for the mitigation funds when it appropriates the funds in the 2017-2019 Capital Budget. To learn more about the settlement and specific eligibility criteria to pursue a portion of the funding please visit Department of Ecology's VW settlement web page at http://www.ecy.wa.gov/programs/air/cars/vw_fed.htm. Webinars are provided to walk you through eligibility categories and other details of the settlement. ■

WPPA SPOTLIGHT

HEAD 'EM UP! PORT OF OLYMPIA SHIPS LIVE CATTLE TO VIETNAM

This week the Port of Olympia added to its diverse cargo mix with its second shipment of live dairy cattle. This shipment included 2,250 head.



The country of Vietnam has launched a campaign geared toward minimizing childhood malnourishment through a strategy of providing "one glass of milk per child per day."

The dairy cows are anticipated to come from Idaho and Washington farms and took part in a quarantine period that was at a United States Department of Agriculture (USDA) approved farm facility. There, veterinarians observed the condition of the animals prior to transporting them overseas.

Following the USDA-regulated holding period, the dairy cows were moved to the Port and directly loaded to the ship. The cattle used a specialized platform and gangway

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KNOWING THE WATERS

By Frank Chmelik of Chmelik Sitkin & Davis P.S. - WPPA Counsel

This month's topic is economic development. Ports across the state – big and small –

are looking at ways to drive economic development. There are a number of tools available to ports that can be used in this effort.

SPENDING PORT FUNDS TO DRIVE ECONOMIC DEVELOPMENT

Ports' very broad powers start with RCW 53.08.245. This statute allows ports to "engage in economic development programs" on their own and "contract with nonprofit corporations" to further port programs or advance other economic development efforts. The activities under this statute can include "job training and placement, pre-apprenticeship training or educational programs associated with port tenants, customers, and local economic development related to port activities." Ports can and have used this statute as the legal basis for a wide variety of economic development programs, including popular grant programs to other local governments and non-profits. These programs are typically based upon an "economic development fund" created and administered by the port district coupled with a process for local governments or non-profits to apply for "grants" to engage in economic development. It really is up to the port commissions to set the parameters of these programs and level of annual funding. When creating these programs, it is important to identify the economic development purpose for each grant, use a standard grant agreement that specifies the exact use of the funds and require a periodic report of measurable outcomes. No sense reinventing the wheel here because there are a number of port district programs throughout the state. One caution relates to grants to local governments. Ports, using the powers granted in this statute, can operate with other ports, governments or non-profits regionally or even state-wide so long as there is a nexus to economic

development in the port district that provides funding. A related power is found at RCW 53.08.255 which allows port to "expend monies and conduct promotion of resources and facilities in the district or general area by advertising, publicizing, or otherwise distributing information to attract visitors and encourage tourist expansion." The statutes overlap and therefore reference to both in economic development actions that involve tourism promotion is advisable.

USING PORT AUTHORITY TO DRIVE ECONOMIC DEVELOPMENT

The authority of ports to form industrial development districts in Chapter 53.25 RCW allows ports to drive economic development. Many ports have used this statute to collect the IDD levy. However, the powers conferred in Chapter 53.25 go well beyond the IDD levy. Once an industrial development district has been created by a port upon a finding of "marginal lands" (see RCW 53.25.030) the port can plan for infrastructure, install the infrastructure, collect assessments for the costs of the infrastructure, condemn property and ultimately sell the property for economic development. In addition to Chapter 53.25, there are condemnation powers throughout various other port statues. Before condemnation (also called "eminent domain") is considered, care should be taken to ensure that there is a sufficient and good public purpose. Article 1, Section 16 of the Washington State Constitution limits condemnation to public purposes. The port's lawyer should definitely be involved in this analysis and the creation of a record that supports the commission's actions.

OTHER TOOLS AVAILABLE TO PORTS TO DRIVE ECONOMIC DEVELOPMENT

An Associate Development Organization ("ADO") is the county's principal economic development organization (either non-profit or government) designated by the county legislative authority. The ADO is defined in RCW 43.330.010 as "a local economic development non-profit corporation that is broadly

representative of community interests." Using port staff, ports can and have taken on this role and thereby act as the coordinator of a county's economic development efforts.

Each year the federal government authorizes tax exempt financing (up to the limit created by Congress) that can be issued by state and local governments for industrial development uses. The total amount allowed by the federal government is then apportioned to the states. In Washington the tax exempt financing is issued by public corporations called industrial development corporations ("IDC"). Ports can and have formed IDCs to facilitate this tax exempt financing. The bonds issued by the IDCs back particular projects and are sold in the investment markets. The bonds are "non-recourse" in the sense that the IDC is not liable for their repayment, rather, the prepayment comes from the borrower and the project. As interest rates rise the use of IDC financing will become more attractive. Care should be taken to adopt IDC issuance guidelines because even though the port is not legally liable for the repayment, the port's name is still on the bonds.

In summary, ports have broad economic development powers ranging from the ability to expend money, the power to take property, the capacity to act as the coordinator of county-wide economic development and even providing access to tax exempt financing.

As always, please contact your port counsel with any legal questions regarding this topic. And, if you have a particular topic for Knowing the Waters please email me at fchmelik@chmelik.com. ■

HEAD'EM UP

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that keeps any hoof from touching the dock. While environmentally safe, this process thwarted Port Director Ed Galligan's lifelong dream of leading a cattle drive. The loading of the feed, bedding, and hay took one day and the cattle loading took a second day.

The loaded vessel will make way for Vietnam on about a three-week voyage with a specialist (cattleman and/or veterinarian) on board to ensure the cattle receive the best treatment. The USDA has vetted all parts of this supply chain to ensure the most humane handling of the animals, and the Port has taken the appropriate measures to alleviate environmental concerns. ■



UPCOMING EVENTS

Spring Meeting

May 17-19, 2017
Suncadia Resort, Cle Elum

Finance and Admin. Seminar

June 14-16, 2017
Semiahmoo Resort, Blaine

Directors Seminar

July 13-14, 2017
Adrift Hotel & Spa and Chinook
School, Long Beach

Commissioners Seminar

July 24-25, 2017
Alderbrook Resort, Union

Environmental Seminar

September 21 – 22, 2017
Heathman Lodge, Vancouver

We hope to see you!

EMPLOYMENT OPPORTUNITIES

Director of Operations

Port of Anacortes

Project Manager 2

Port of Anacortes

Marketing & Outreach Assistant

Port of Olympia

Full-Time, Temporary (Seasonal) Port Maintenance

Port of Bremerton

Director of Business Development

Port of Bremerton

Executive Director

Port of St. Helens, Oregon

Executive Director

Port of St. Helens, Oregon

Security Duty Officer

Port of Seattle

Accounting & Financial Reporting

Bus. Tech. Consultant AFR

Business Technology Department

Port of Seattle

Security Duty Officer

Port of Seattle

Assistant Manager/Maintenance Supervisor

Port District No. 1 of Wahkiakum County

Marina Office Assistant –

LaConner Marina

Port of Skagit

Port Auditor / Treasurer

Port of Walla Walla

Senior Manager, Planning

Northwest Seaport Alliance

Executive Director

Port of Coupeville

Executive Director

Port of Friday Harbor

Sr. Manager Communications - Aviation Marketing

Port of Seattle

Airport Duty Manager - Airfield Operations

Port of Seattle

Senior Accountant

Port of Seattle

Contract Administrator - Construction

Port of Seattle

Director, Engineering

Port of Tacoma

Senior Real Estate Manager

Port of Tacoma

Assistant Director, Facilities

Port of Tacoma

If you would like information on any of these positions, visit washingtonports.org/washington-ports/employment-opportunities