

SHORELINE HEARINGS BOARD NIXES KALAMA ENVIRONMENTAL REVIEW

In an unexpected decision with broad ramifications for many future projects, the Shoreline Hearings Board recently rejected the environmental analysis that the Port of Kalama and Cowlitz County prepared for a proposed methanol manufacturing plant. Northwest Innovation Works has proposed to build and operate a \$1.8 billion facility at the Port of Kalama which would use natural gas to manufacture methanol, and then export the methanol by tanker to Asia.



In the final EIS for the project, the Port in partnership with Cowlitz County prepared a comprehensive assessment of the environmental impacts of the facility, in order to inform subsequent permitting agencies. In assessing the greenhouse gas impacts for the proposal, the port's consultants used GHG (greenhouse gas) mitigation guidance that had been

prepared by the Department of Ecology, and also relied on the plant's design – which will use a new technology that results in 31% less greenhouse gas emission than other existing plants.

The Department of Ecology subsequently indicated that it no longer stood by its guidance, and effectively retracted it – though no announcement of that decision was ever made publicly. The Department of Ecology also has not replaced its guidance with any additional guidance. The Shoreline Hearings Board, in hearing the appeal of the Shoreline Permit, issued a Summary Judgment that the EIS did not adequately assess the significance of GHGs from the proposed plant and its failure to do so fatally damaged its mitigation proposal. As a result, that section of the EIS was rejected and the shoreline substantial development and conditional use permits were invalidated.

In addition to requiring that a project now propose their own GHG mitigation standards, the Board also indicated that the environmental impacts of extracting and transporting the methane (which occur largely outside of the state), and the trans-Pacific transport of the cargo to Asia should have been included as a project-related impact.

The impacts of this decision are profound. The Board's decision exposes not just carbon-related development, but all new projects to legal challenge related to GHG emissions and mitigation. The lack of a clear carbon mitigation standard or other state GHG policy leaves permit applicants exposed to legal second guessing regardless of any proposed GHG mitigation they may propose. ■

PORT SPOTLIGHT

NW SEAPORT ALLIANCE UPGRADES TERMINAL

The Northwest Seaport Alliance (NWSA) – the commercial partnership between the Ports of Seattle and Tacoma, is at the mid-point of one of its major marine terminal upgrades. The South Harbor in Tacoma is currently home to Pier 4 which has been part of Husky Terminal, a major container terminal, for many years.

The pier needed substantial upgrades, however, in order to create one contiguous berth capable of serving two 18,000-TEU container ships. These improvements will support larger container cranes and vessels, which are necessary because of the dramatic changes in the container shipping business model.

In order to remain competitive in the trans-Pacific market, and in order to keep the Pacific Northwest Gateway a premier trading route, the NWSA is investing in eight additional cranes and making substantial pier upgrades. Most of the original pier was demolished, and contaminated sediments were also removed.



The reconfigured pier will align with the adjacent Pier 3, as well as include upgraded pilings and terminal space. This alignment also improves navigational safety in the waterway.

The project is expected to be completed in 2018. ■



KNOWING THE WATERS

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

This month's column focuses on ports working with local towns,

cities or counties to enforce port rules and regulations. The idea for this column came from a port that was having trouble enforcing its boat launch parking rules, most notably having folks pay the trailer boat launch fee. Many, if not most, ports have a boat launch where a modest fee is assessed for launching a boat and/or parking a boat trailer. Most of these arrangements are "self-service" affairs. Enforcement can be difficult when a towing company is called or other actions taken.

But the issue is bigger than boat launches. There are other instances where port rules are sometimes difficult to enforce like port street parking restrictions, prohibitions against swimming in marinas, and rules against overnight camping in port parks. If your port has issues with enforcing its rules and regulations consider RCW 53.08.220. This statute, dating from 1961, allows ports to petition the appropriate town, city or county to add selected port rules and regulations to that

jurisdiction's criminal or traffic code thereby allowing local law enforcement to issue citations and even make arrests.

First a little legal definition. A misdemeanor is the lowest level of criminal charge. In Washington, these crimes are punishable by up to 90 days in a county or city jail and a \$1,000 fine or both. Examples of common misdemeanor crimes are simple assault, vandalism and shoplifting. Civil infractions are not crimes, but rather violations of prohibitive civil laws, including traffic laws. Examples of civil infractions are speeding and street parking violations.

RCW 53.08.220 allows port districts, after holding a public hearing, to pass a resolution requesting that certain of its rules and regulations be adopted by the local jurisdiction as part of its criminal code or traffic code. Of course, before doing this a port would be well advised to coordinate with the local jurisdiction so that the port rules and regulations are in the proper format for adoption by the local jurisdiction. After adoption by the port commission, the resolution

is transmitted to the local jurisdiction for consideration and possible adoption by the local jurisdiction's governing body. Once adopted the port rules and regulations become part of the local jurisdiction's code and can be enforced by local law enforcement.

Of course, one might ask what happens to the fine revenue? This would be a matter for discussion with the local jurisdiction and possibly an interlocal agreement. I suspect most local jurisdictions will want to keep the fine revenue to offset the costs of enforcement. Also, be careful about creating criminal misdemeanors because the local jurisdiction may ask the port to pay for the per diem jail fee to incarcerate the offender. At the end of the day, it probably is more about enforcing port rules and regulations as opposed to generating revenue.

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

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HR Manager, Labor & Employee Relations
Port of Tacoma

Accounting & Financial Reporting Business Technology Analyst
Port of Seattle

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Port of Tacoma

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Port of Everett

Director, Port Operations
Northwest Seaport Alliance

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