

NO: R070

COUNCIL DATE: **MAY 11, 2015**

REGULAR COUNCIL

TO: Mayor & Council **DATE: May 7, 2015**

FROM: General Manager, Engineering **FILE: 8710-01**
General Manager, Planning & Development **XC: 5650-20(FRPA)**
City Solicitor

SUBJECT: Proposed Amendment by Fraser Surrey Docks to the Existing Project Permit that Authorizes a Direct Transfer Coal Facility at the Fraser Surrey Docks

RECOMMENDATION

The Engineering Department, the Planning and Development Department and the Legal Services Division recommend that Council:

1. Receive this report as information; and
2. Authorize the City Clerk to forward a copy of this report and the related Council resolution to each of Fraser Surrey Docks (FSD) and Port Metro Vancouver (PMV) as the City of Surrey's comments on the Discussion Guide and Feedback Form recently issued by Fraser Surrey Docks.

INTENT

The purpose of this report is to advise Council that FSD is considering amending their Project Permit in order to support transferring coal to ocean going vessels.

BACKGROUND

At its Regular Council meeting on March 11, 2013, Council considered Corporate Report No. R044; 2013 titled "Application to Port Metro Vancouver by Fraser Surrey Docks for a Proposed Direct Transfer Coal Facility at Fraser Surrey Docks." The report provided details on an application by FSD to PMV to install and operate a Direct Transfer Coal Facility (the "Facility") at the existing Surrey terminal. Under the proposal, coal hauled from the USA by Burlington Northern Santa Fe ("BNSF") railway would be loaded at the Facility onto barges for towing to Texada Island. The proposed Facility would handle up to 4,000,000 metric tonnes of coal per year. The report outlined concerns related to the transportation of coal through Surrey by way of the BNSF railway and related to the operation of the Facility.

The concerns are centred around three main issues:

- coal dust;
- noise; and
- increased rail traffic.

Council instructed the City Clerk to forward a copy of that report and the related Council resolution to PMV and FSD as the City's comments on the application. Council also directed staff to request that a specific response be sought from PMV addressing the concerns outlined in the report.

At its meeting on May 6, 2013, Council considered the following recommendation of the Environment and Sustainability Advisory Committee:

“..that Council recommend staff and the Environmental Advisory Committee be part of the consultative and Environmental Assessment Review process for the Fraser Surrey Docks Ltd. Partnership – Coal Facility Project proposal.”

After considering the recommendation, Council resolved as follows:

“That the recent correspondence received by the City of Surrey from Port Metro Vancouver related to the Fraser Surrey Docks Coal Transfer Facility be forwarded to the Environmental Advisory Committee and that the Committee be advised that the authority related to approving the Fraser Surrey Dock (FSD) application including environmental considerations rests with Port Metro Vancouver who are consulting with stakeholders including affected municipalities as part of the process of considering the application.”

On May 15, 2013, the City received a notice from PMV of additional consultation in the form of open houses being hosted by FSD in Surrey on May 23 and 25, 2013. Included in the PMV notice was information about how the concerns outlined in Corporate Report No. R044;2013 would be addressed, among other concerns. Staff attended the FSD open house on May 23, 2013 and found that the concerns raised at this meeting were consistent with those previously considered by Council.

On October 28, 2013, a delegation appeared before Council-in-Committee to present a number of concerns related to the proposed Facility. Following this presentation, at its Regular Council meeting on the same date Council resolved that:

“Council not support the proposed expansion of thermal coal exports at Surrey Fraser Docks until:

- 1. an independent third-party Health Impact Assessment has been completed; and*
- 2. Port Metro Vancouver holds formal public hearings regarding the proposed project at Surrey Fraser Docks.”*

At its Regular Council meeting on November 25, 2013, Council considered Corporate Report No. R238; 2013 titled "Update on the Application to Port Metro Vancouver by the Fraser Surrey Docks to Implement a Direct Transfer Coal Facility at the Fraser Surrey Docks". A copy of that report is attached to this report as Appendix I. The report outlined concerns with the proposed project as it relates to the scope of the environmental impact assessment, stormwater management, dust control, noise control, erosion and sediment control, flood risk, health impact assessment and consultation with staff.

Council instructed the City Clerk to forward a copy of that report and the related Council resolution to PMV and FSD as the City's comments on the application.

On August 11, 2014, PMV issued Project Permit 2012-072 (the "Permit") to Fraser Docks that authorizes FSD to construct and operate a Direct Transfer Coal Facility in Surrey.

Following issuance of the Project Permit, an application seeking judicial review of the Permit Decision has been made by the Communities and Coal Society, Voters Taking Action on Climate Change, Christine Dujomovich and Paula Williams (the "Applicants") and filed in Federal Court by Ecojustice Canada Society, counsel for the Applicants. Among other things, the application challenges the Permit Decision on the basis of the Port's failure to consider certain environmental effects as required by the Canadian Environmental Assessment Act, 2012, SC 2012, c. 19, s.52 (the "CEAA 2012") and that the conduct of the Port and its officers and staff during the Project review process violated the principles of natural justice, procedural fairness and the rule against bias.

At its Regular Council meeting on October 20, 2014, Council considered Corporate Report No. R185; 2014 titled "Fraser Docks Coal Transfer Facility – Application for Intervener Status" and authorized staff to file a Notice of Motion seeking Intervener status in Federal Court Action No. T-1072-14. A copy of that report is attached to this report as Appendix II.

On April 8, 2015, in response to an invitation from Metro Vancouver to submit comments on an application for a waste discharge permit received from Fraser Surrey Docks, the City expressed that it does not support the issuance of a waste discharge permit to Fraser Surrey Docks because, among other things, it allows for the discharge of storm water into a sanitary system. With reference to a Notice of Motion filed by Ecojustice on behalf of the Applicants, the City also requested that before any consideration is given by Metro Vancouver to Fraser Surrey Dock's Application, documents evidencing that the decision to issue a Project Permit and make an environmental determination under s.67 of the *Canadian Environmental Assessment Act* for the Direct Transfer Coal Facility have been lawfully made, should be provided by Vancouver Fraser Port Authority and/or Fraser Surrey Docks to Metro Vancouver.

On April 23, 2015, the Federal Court granted the relief sought by the Applicants in their Notice of Motion. Among other relief, the Federal Court granted leave to the Applicants to allege that the Chief Executive Officer (CEO) of the Port Authority lacked the requisite authority to issue the Permit to Fraser Surrey Docks or to make a determination under s.67(a) of the *Canadian Environmental Assessment Act*. Attached as Appendix IV to this report is a copy of the Federal Court's Decision.

Following the Federal Court's Decision, the City on April 28, 2015 supplemented its comments to Metro Vancouver in relation to Fraser Surrey Docks application for a waste discharge permit by bringing the following excerpt from the Federal Court Decision to the attention of Metro Vancouver:

*"...The Applicants have established that certain evidence was not available to them when they commenced the application. Information came to light on February 16th and 27th, 2015, by way of emails received from the City of New Westminster, which raises questions about the CEO's authority to issue the Permit. **On the record before me, I am unable to determine whether the CEO had the delegated authority to make either of the two impugned decisions. The Port's own documents that have been produced to date are less than clear about the identity of the decision makers and their authority to make the decisions...**"*

Together with the City of New Westminster, the City expects to proceed with its Notice of Motion to seek Intervener status in the now Amended Notice of Application in late May or early June, 2015.

On May 5, 2015, staff were advised by FSD and PMV that FSD is considering a request to amend their Permit.

DISCUSSION

FSD is considering applying to PMV to amend its existing permit, as outlined in their Discussion Guide and Feedback Form, a copy of which is attached as Appendix III.

The proposed amendment would allow FSD to load coal directly from the Facility to ocean-going vessels (OGV). FSD has indicated that using OGVs would allow them eliminate or reduce the number of barges required to convey coal from FSD's site to Texada Island for transfer to OGVs. FSD has also indicated that the proposed amendment would have no impact on the volume of coal currently permitted to be shipped through FSD.

To support this proposed amendment, FSD has initiated a public consultation period from May 4 through the 19th and has requested that interested parties provide comments on the scope of the preliminary studies being undertaken by FSD as part of its consideration to amend its' Permit.

These studies include:

- Human Health Risk Assessment;
- Environmental Impact Assessment;
- Air Quality Assessment;
- Marine Risk Assessment;
- Environmental Management Plan;
- Water Management Plan;
- Fire Life Safety Plan; and
- Spill Response.

In addition, FSD is seeking any additional comments regarding the proposed application to amend its Permit.

Based on the limited information provided in the Discussion Guide and Feedback Form, and in the absence of updates to the various assessments and plans completed to date, staff believe that the concerns previously expressed by the City to FSD and PMV during consideration of the original permit application are still relevant to the proposed amendment and recommended that appropriate studies be undertaken to address these concerns. Staff may also have additional concerns and probably more significant concerns as more information becomes available particularly in light of the lack of information provided to date, the change in scope for Fraser Surrey Docks plans, and the unreasonably short period of time (i.e., May 4 to 14, 2015) that Fraser Surrey Docks has allotted for public consultation.

In addition to concerns previously expressed, staff have now had an opportunity to review the past decision making process undertaken by Port Metro Vancouver in relation to the CEO's Permit Decision, as well as the purported determination made under s.67 of the *Canadian Environmental Assessment Act*. Staff agree with the Applicants (being Communities and Coal Society, Voters Taking Action on Climate Change, Christine Dujomovich and Paula Williams) that both the Permit Decision and the determination under s.67 of the *Canadian Environmental Assessment Act* were made without requisite authority and, therefore, recommend that the City object to the Project Permit and the amendment sought to the Project Permit on this basis as well.

Next Steps

Should FSD make application to PMV to amend their Project Permit, PMV has indicated that application will be referred to select municipalities and agencies for review and comment. The amendment application, including all supporting documents, will then be available on their website for a three-week consultation period.

CONCLUSION

FSD is considering amending their Project Permit in order to support transferring coal to ocean going vessels. Based on the above discussion, it is recommended that Council:

- Receive this report as information; and
- Authorize the City Clerk to forward a copy of this report and the related Council resolution to each of Fraser Surrey Docks (FSD) and Port Metro Vancouver (PMV) as the City of Surrey's comments on the Discussion Guide and Feedback Form recently issued by Fraser Surrey Docks.

Fraser Smith, P.Eng., MBA
General Manager,
Engineering

Jean Lamontagne
General Manager,
Planning & Development

Craig MacFarlane
City Solicitor

JL/JA/AC/clr

Appendix I - Corporate Report No. R238; 2013 titled "Update on the Application to Port Metro Vancouver by the Fraser Surrey Docks to Implement a Direct Transfer Coal Facility at the Fraser Surrey Docks"

Appendix II - Corporate Report No. R185; 2014 titled "Fraser Docks Coal Transfer Facility - Application for Intervener Status"

Appendix III - Discussion Guide and Feedback Form

Appendix IV - April 23, 2015 Federal Court Order



CORPORATE REPORT

NO: *R238*COUNCIL DATE: *November 25, 2013*

REGULAR COUNCIL

TO: **Mayor & Council** DATE: **November 21, 2013**

FROM: **General Manager, Engineering** FILE: **5650-20(FRPA)**
General Manager, Planning and Development

SUBJECT: **Update on the Application to Port Metro Vancouver by the Fraser Surrey Docks to Implement a Direct Transfer Coal Facility at the Fraser Surrey Docks**

RECOMMENDATION

The Engineering Department and the Planning and Development Department recommend that Council:

1. Receive this report as information;
2. Authorize the City Clerk to forward a copy of this report and the related Council resolution to each of Fraser Surrey Docks (FSD) and Port Metro Vancouver as the City of Surrey's comments on the recently released Environmental Impact Assessment report titled "*Environmental Impact Assessment for the Direct Transfer Coal Facility*"; and
3. Authorize the City Clerk to forward a copy of this report and the related Council resolution to the Chief Medical Health Officer of the Fraser Health Authority with a request that the Fraser Health Authority undertake a full review of the Environmental Impact Assessment that was recently released by the FSD for public comment.

INTENT

The purpose of this report is to provide an overview of an Environmental Impact Assessment that has been completed in support of the application by Fraser Surrey Docks ("FSD") to implement a Direct Transfer Coal Facility at FSD.

BACKGROUND

At its Regular Council meeting on March 11, 2013 Council considered Corporate Report No. Ro44; 2013 titled "Application to Port Metro Vancouver by Fraser Surrey Docks for a Proposed Direct Transfer Coal Facility at Fraser Surrey Docks." A copy of that report is attached to this report as Appendix I. The report provided details on an application by FSD to Port Metro Vancouver ("PMV") to install and operate a Direct Transfer Coal Facility (the "Facility") at the existing Surrey terminal. Under the proposal, coal hauled from the USA by Burlington Northern Santa Fe ("BNSF") railway would be loaded at the Facility onto barges for towing to Texada Island. The proposed Facility would handle up to 4,000,000 metric tonnes of coal per year. The report

outlined concerns related to the transportation of coal through Surrey by way of the BNSF railway and related to the operation of the Facility. The concerns centred around three main issues:

- coal dust;
- noise; and
- increased rail traffic.

Council instructed the City Clerk to forward a copy of that report and the related Council resolution to PMV and FSD as the City's comments on the application. Council also directed staff to request that a specific response be sought from PMV addressing the concerns outlined in the report.

At its meeting on May 6, 2013 Council considered the following recommendation of the Environment and Sustainability Advisory Committee:

"..that Council recommend staff and the Environmental Advisory Committee be part of the consultative and Environmental Assessment Review process for the Fraser Surrey Docks Ltd. Partnership – Coal Facility Project proposal".

After considering the recommendation, Council resolved as follows:

"That the recent correspondence received by the City of Surrey from Port Metro Vancouver related to the Fraser Surrey Docks Coal Transfer Facility be forwarded to the Environmental Advisory Committee and that the Committee be advised that the authority related to approving the Fraser Surrey Dock (FSD) application including environmental considerations rests with Port Metro Vancouver who are consulting with stakeholders including affected municipalities as part of the process of considering the application."

On May 15, 2013 the City received a notice from PMV of additional consultation in the form of open houses being hosted by FSD in Surrey on May 23 and 25, 2013. Included in the PMV notice was information about how the concerns outlined in Corporate Report No. Ro44;2013 would be addressed, among other concerns. Staff attended the FSD open house on May 23, 2013 and found that the concerns raised at this meeting were consistent with those previously considered by Council.

On October 28, 2013 a delegation appeared before Council-in-Committee to present a number of concerns related to the proposed Facility. Following this presentation, at its Regular Council meeting on the same date Council resolved that:

"Council not support the proposed expansion of thermal coal exports at Surrey Fraser Docks until:

- 1. an independent third-party Health Impact Assessment has been completed; and*
- 2. Port Metro Vancouver holds formal public hearings regarding the proposed project at Surrey Fraser Docks."*

In response to concerns regarding the environmental and health impacts associated with the construction and operation of the Facility, FSD retained a consultant to complete an Environmental Impact Assessment (the "EIA"). The report related to the EIA was released by

PMV on November 18, 2013 and they have provided a period of 30 days for interested parties to comment on that report.

No public hearings regarding the proposed project at SFD are currently scheduled.

DISCUSSION

Staff has reviewed the *Environmental Impact Assessment for the Direct Transfer Coal Facility* ("the Report") that was prepared by SNC-LAVALIN Inc. and their sub-consultants, a copy of which is attached to this report as Appendix II. The Report takes into account recent changes to the original permit application to address some of the concerns that were previously raised. These changes include:

- The elimination of the coal emergency stockpile on the site;
- The application of additional dust suppression agents on loaded rail cars mid-transit to the Facility; and
- The application of additional dust suppression agents prior to the loading onto barges at the Facility.

In general, staff has determined that the Report is incomplete, and that there are a number of concerns related to impacts to the environment and municipal infrastructure that could be caused by the Facility that have not been adequately addressed. These concerns are documented in the following section of this report.

Scope of the EIA

The Report only addresses the development and operation of the Facility itself at the FSD including new rail line infrastructure within PMV lands, the transfer of coal at the FSD Facility from rail cars onto barges and the moving of barges loaded with coal from the Facility to Texada Island. The Report does not address or evaluate the environmental or health impacts associated with the transporting of coal through the City of Surrey to the Facility by way of the BNSF railway. The City of Surrey had expressed significant concerns with the impacts of moving coal by rail through the City of Surrey to the FSD Facility.

Stormwater Management

The Report references and evaluates three potential stormwater management approaches for the Facility in relation to managing stormwater due to significant rainfall events. They are as follows:

- discharge to the City's sanitary sewer system;
- discharge to the Fraser River; and
- infiltration.

Discharge to the City's sanitary sewer system

Stormwater is not permitted to be discharged to the City's sanitary sewer system. Surrey's *Sanitary Sewer Regulation and Charges By-law, 2008, No. 16611*, states that:

"No person may discharge or continue to allow to be discharged into a *building sanitary sewer* or the *sanitary sewerage system* any *stormwater* or permit any *groundwater* infiltration."

This provision relates to the costs associated with the unnecessary conveyance and treatment of stormwater at the Annacis Island sewage treatment plant. Further the discharge of stormwater and groundwater to the City's sanitary sewer system can increase the frequency and duration of sanitary sewer overflows, especially during significant rainfall events, which have recently occurred along Metro Vancouver's collection system in this area.

In addition, the Material Safety Data Sheets related to some of the suggested chemical agents that are proposed to be applied to the coal to assist in dust control and binding and have the potential to run off during rainfall events, indicate that they should not be discharged to sewers.

Discharge to the Fraser River

Stormwater runoff will likely contain a large amount of sediment. In an effort to control sediment laden runoff, FSD is proposing a number of mitigation strategies, including the additional of a chemical flocculent. There is concern that the flocculent may be discharged to the Fraser River and have impacts on the ecosystem of the River.

Additionally, the Material Safety Data Sheets for many of the suggested chemical agents that may be used to assist in dust control and binding and have the potential to run off during rainfall events, indicate that they are not to be discharged to open water bodies. In addition, staff is uncertain of the toxicology of many of the suggested chemical agents and their impacts on River ecosystems.

Infiltration

Staff is unsure of the feasibility of infiltrating stormwater in this area given the high groundwater levels in this area, especially during significant rainfall events. No percolation tests were undertaken as part of the EIA to determine if this approach is feasible.

The Report also indicates that it is likely that the existing lands are contaminated due to past activities on the PMV lands and the groundwater is part of a shallow unconsolidated aquifer. Staff is therefore concerned that if there is infiltration capacity, it may result in the dispersion into the local groundwater system of contaminants associated with past activities on the PMV lands and related to any chemical agents that may be added as part of the operation of the Facility to assist in dust control and binding.

Dust Control

FSD is proposing to use water from the City's community water system to assist in dust control at the Facility. The Report does not quantify the amount of water that will be required in this regard.

A water use plan needs to be prepared that details the projected water use related to the dust control system and an assessment needs to be made in relation to potential negative impacts on the City's ability to supply water to development in the surrounding area.

Noise Control

The EIA identifies a number of noise mitigation measures related to the construction and operation of the Facility.

Erosion & Sediment Control

The Report recommends that weekly environmental monitoring be undertaken to ensure that stormwater runoff during construction of the project does not negatively impact receiving watercourses. Given the site's close proximity to the Fraser River and local watercourses, staff suggest that the FSD follow the inspection and reporting requirements as outlined in the City's Erosion and Sediment Control By-law, 2006, No. 16138.

Flood Risk

The Report indicates that the Facility will be constructed above an elevation of 3.8 m which is the flood level of the Fraser River as estimated by the Province. The Provincial standard for dykes is an elevation of flood level plus 0.6 metres (2 feet) of freeboard to account for water level increases from wind setup and storm surges. Therefore, the facility would need to be constructed above an elevation of 4.4 m in order to mitigate the risk of flooding.

Consultation with Staff

City staff was not consulted during the preparation of the EIA. Staff holds the view that the Report could have been more fulsomely completed had consultation with the City occurred during its development.

Health Impact Assessment

As part of the EIA, a health impact assessment, primarily relating to air quality resulting from dust, was undertaken. The Report indicates that the operation at the Facility is not likely to cause significant adverse health effects with the implementation of the mitigation measures. The Chief Medical Health Officers for each of the Fraser Health Authority and the Vancouver Coastal Health Authority, respectively, has expressed some concern with the health assessment as documented in the draft EIA that was provided to them in advance of the EIA report being released for public comment. A copy of correspondence to PMV from the Chief Medical Health Officers that documents their concerns is attached to this report as Appendix III.

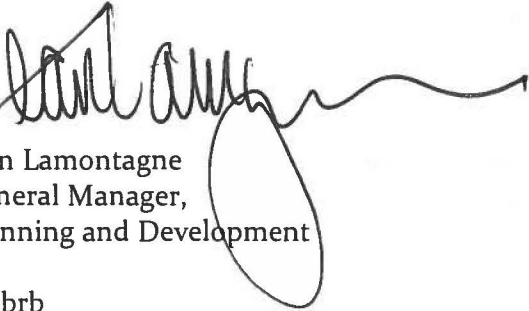
Staff is unsure of any differences between the draft EIA provided to the Chief Medical Health Officers and the Report that has been recently released for public comment. In this regard it would be prudent for the City to request that the Chief Medical Health Officer at the Fraser Health Authority be requested to undertake a further review of the Report that has recently been released for public comment to which this report relates.

CONCLUSION

An application by FSD to install and operate a Direct Transfer Coal Facility is under consideration by PMV. As part of the consultation process, an EIA has been completed. Staff has a number of concerns related to the information contained within the Report that was recently released for public comment. The Chief Medical Health Officers for each of the Fraser Health Authority and the Vancouver Coastal Health Authority have expressed some concern with a draft EIA provided to them in advance of the Report being released to the general public.

Based on the above discussion, it is recommended that Council authorize the City Clerk to forward a copy of this report and the related Council resolution:

- to each of Fraser Surrey Docks (FSD) and Port Metro Vancouver as the City of Surrey's comments on the recently released Environmental Impact Assessment report titled "*Environmental Impact Assessment for the Direct Transfer Coal Facility*"; and
- to the Chief Medical Health Officer of the Fraser Health Authority with a request that the Fraser Health Authority undertake a full review of the Environmental Impact Assessment that was recently released by the FSD for public comment.



Jean Lamontagne
General Manager,
Planning and Development

JA/brb



Vincent Lalonde, P.Eng.
General Manager, Engineering

- Appendix I - Corporate Report No. R044;2013, titled "Application to Port Metro Vancouver by Fraser Surrey Docks for a Proposed Direct Transfer Coal Facility at Fraser Surrey Docks"
- Appendix II - Report prepared by SNC-Lavalin Inc titled "*Environmental Impact Assessment for the Direct Transfer Coal Facility*"
- Appendix III - Letter dated November 13, 2013 from the Fraser Health Authority and Vancouver Coastal Health to Port Metro Vancouver

NO: **R044**

COUNCIL DATE: **March 11, 2013**

REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **March 7, 2013**

FROM: **General Manager, Engineering
General Manager, Planning and Development**

FILE: **5650-20(FRPA)**

SUBJECT: **Application to Port Metro Vancouver by Fraser Surrey Docks for a Proposed
Direct Transfer Coal Facility at Fraser Surrey Docks**

RECOMMENDATION

The Engineering Department and the Planning & Development Department recommend that Council:

1. Receive this report as information; and
2. Instruct the City Clerk to forward a copy of this report and the related Council resolution to Port Metro Vancouver (PMV) and the Fraser Surrey Docks (FSD) as the City's comments on the application by FSD to PMV to install and operate a Direct Transfer Coal Facility at Fraser Surrey Docks and include in such communication a request that PMV address the concerns listed in this report in the application review process.

INTENT

The purpose of this report is to provide an overview of a Direct Transfer Coal Facility that is being proposed by Fraser Surrey Docks (FSD) at the Fraser Surrey Docks in Surrey and for which an application has been submitted to Port Metro Vancouver (PMV) and to document concerns with the proposed Facility that should be addressed by PMV in its consideration of the subject application.

BACKGROUND

The Vancouver Fraser Port Authority, which operates under the name Port Metro Vancouver (PMV), is a federal agency that is responsible for the operation and development of port interests along 600 km of shoreline in the Metro Vancouver area including the port activities along the Fraser River in Surrey.

Fraser Surrey Docks (FSD) is a tenant of the PMV lands in Surrey and is a large multi-purpose marine terminal that handles a variety of cargo including containers, steel, forest products, salt, and bulk materials.

FSD has submitted a project permit application to PMV for the development of a Direct Transfer Coal Facility (the "Facility") at the southwest end of the existing FSD terminal to handle up to 4,000,000 metric tonnes of coal per year.

The coal will be hauled by Burlington Northern Santa Fe (BNSF) railway to the Facility and will be loaded directly onto barges from the rail cars. The coal is expected to originate from Montana and Wyoming and will ultimately be shipped overseas. No coal is expected to be stored at the FSD terminal during normal operations; however, the Facility is being designed to accommodate the temporary storage of up to 30,000 metric tonnes of coal to address unforeseen circumstances.

When the coal is loaded on barges at the Facility, tugs will tow single barges down the Fraser River to its mouth. Once the barges pass Sand Heads, they will be towed in tandem to Texada Island, where the coal will be off-loaded and stored before being transferred to deep sea vessels for shipment overseas.

Although the current application is seeking to transfer as much as 4,000,000 metric tonnes per year, there is potential to increase volumes up to a total of 8,000,000 metric tonnes per year over the longer term but such an expansion would be subject to a new application to PMV for a project permit.

The current application process has included community engagement and has included referral to First Nations.

DISCUSSION

Staff has met with representatives of PMV and of FSD to better understand the proposed Facility and to identify potential implications that its implementation may have on stakeholders in Surrey.

The following sections document the results of staff's review of the proposal and list the concerns that from staff's perspective should be addressed by PMV in relation to its consideration of the application for the Facility. There are two fundamental aspects to the proposal, each of which has potential concerns to stakeholders in Surrey. These aspects are:

- A. The transportation of the coal through Surrey by way of the BNSF railway to the Facility;
and
- B. The operation of transferring the coal from rail cars to barges at the Facility.

A. Concerns Related to Transporting Coal by Railway through Surrey

Description:

The FSD is planning to receive coal by way of trains that will travel on the BNSF railway through Surrey and that will be approximately 135 rail cars long, approximately 7,500 feet in length. At the outset of the operation, FSD is planning to transfer 2,000,000 metric tonnes of coal per year at the Facility, which equates to approximately 160 trains per year or on average approximately one train every two days. FSD has advised that after the first year the amount of coal to be transferred through the Facility will be increased to 4,000,000 metric tonnes per year, which equates to 320 trains per year or an average of 1 train per day approximately. Each such train would pass through Surrey in a loaded condition going north and would pass through Surrey again after being

unloaded heading south (i.e., each train would result in two trips through Surrey; one in each direction).

Concerns:

1. BNSF train blockages at Crescent Road and at other grade level rail/road crossings in Surrey
Increases in rail traffic on the BNSF railway will result in increased delays at the single access point to Crescent Beach at Crescent Road. Approximately 16 to 20 trains per day currently pass Crescent Beach on the BNSF rail line. Six hundred and forty (640) new trains per year, which is the expected volume for the Facility, would increase total train movements by approximately 10% at this crossing (i.e., an average increase of just under 2 movements a day).

There is already concern within the Crescent Beach community regarding emergency access and regular access to the community being blocked due to trains on the BNSF railway. As mentioned above, Crescent Road is the only road connection to the Crescent Beach community. Although a "stopped train" protocol has been implemented with the BNSF through the Crescent Beach area, even when trains don't stop they can cause extended blockages at Crescent Road due to speed restrictions on the railway trestle that crosses Mud Bay.

FSD has advised that it is expecting trains to arrive at the Facility between 12:00 a.m. and 6:00 a.m. and depart between 5:00 p.m. and 10:00 p.m. thereby minimizing the likelihood for delays at rail crossings in Surrey during normal higher road traffic periods.

2. Coal Dust
Members of the community have raised concern with the potential for the coal on the trains to shed coal dust due to wind turbulence that occurs as the trains move through Surrey and that the coal dust could have health, environmental and aesthetic impacts on the residents and properties located along the railway.
3. Noise
Additional train traffic will result in additional noise caused by the engines pulling the trains, the wheel noise of the train cars and the whistle noise at road crossings.

B. Concerns Related to the Transfer of Coal from Rail Cars to Barges at the FSD Facility

1. Coal Dust
Members of the community have raised concern with the potential for the transfer operation to cause coal dust that will be blown into the adjacent communities and which could cause health, environmental and aesthetic impacts on the residents and properties in these communities.
2. Noise
There is concern that the additional train traffic and the transferring of coal at the Facility will cause noise that will be a disturbance to those that work and/or live in the vicinity of the Facility. The City has experienced receiving complaints from residents in the area of the FSD in the past in relation to materials being handled at the FSD such as the moving of steel that has been handled at FSD.

3. Safety

There is concern that the storing of and transfer of coal at the Facility could be dangerous in relation to potential fires in view of the volatility of coal as a fuel.

Economic Development Interests

The City of Surrey is interested, subject to all stakeholder interests being reasonably addressed, in ensuring that the Fraser Surrey Dock Facility is used to its maximum potential so as to assist in ensuring a vibrant and sustainable economy in our City and the Region. It is recognized that port-related jobs are relatively high value jobs and therefore are good for the broader economy.

Public Consultation

PMV representatives and FSD representatives have met with City staff and have made presentations to each of the Environmental Advisory Committee (EAC) and the Transportation and Infrastructure Committee (TIC).

The EAC has resolved to advise Council as follows:

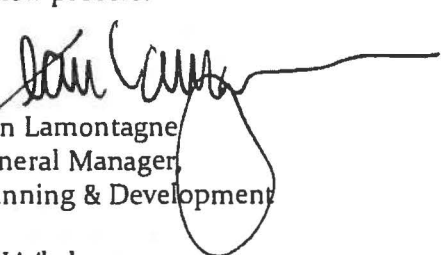
“that Council be made aware of the community and Environmental Advisory Committee concerns of coal dust and train noise when considering the Coal Transfer Facility proposal from the Fraser Surrey Dock Ltd. Partnership.”

The TIC did not pass a formal resolution but the comments in this report generally reflect the comments that were made by the Committee.

PMV representatives and FSD representatives have also met with the Crescent Beach Property Owners Association, the Corporation of Delta and the City of New Westminister. The concerns that are listed in the previous sections of this report are consistent with those raised during these other consultations.


CONCLUSION

Based on the above discussion, it is recommended that Council instruct the City Clerk to forward a copy of this report and the related Council resolution to Port Metro Vancouver (PMV) and the Fraser Surrey Docks (FSD) as the City's comments on the application by FSD to PMV to install and operate a Direct Transfer Coal Facility at Fraser Surrey Docks and include in such communication a request that PMV address the concerns listed in this report in the application review process.



Jean Lamontagne
General Manager,
Planning & Development

JB/JA/brb



~~For~~ Vincent Lalonde, P.Eng.
General Manager,
Engineering

**Report prepared by SNC-Lavalin Inc titled
“*Environmental Impact Assessment for the
Direct Transfer Coal Facility*”**

To access the above report, please follow the links provided below:

<http://www.portmetrovancover.com/docs/default-source/PROJECTS-FSD/volume-1-main-document-and-executive-summary.pdf?sfvrsn=0>

<http://www.portmetrovancover.com/docs/default-source/PROJECTS-FSD/volume-2-appendices-i-to-vii.pdf?sfvrsn=0>

<http://www.portmetrovancover.com/docs/default-source/PROJECTS-FSD/volume-3-appendices-viii-to-ix.pdf?sfvrsn=0>

<http://www.portmetrovancover.com/docs/default-source/PROJECTS-FSD/volume-4-attachments.pdf?sfvrsn=0>



November 13, 2013

DARRELL DESJARDIN
Director, Environmental Programs
Port Metro Vancouver
100 The Pointe
999 Canada Place
Vancouver, BC V6C 3T4

Dear Mr. Desjardin:

RE: October 24 2013 draft of the Fraser Surrey Docks EIA

We thank you for the opportunity to provide comments on the above document prepared by SNC Lavalin for Fraser Surrey Docks (FSD). We apologize for missing the agency comment deadline. To minimize delay in the review process, we will provide a copy of our comments to the proponent (FSD) directly. Due to the short turnaround time for agencies to provide response, we will provide additional comments as necessary during the public comment period.

Should it proceed as planned, this project will see the transportation of coal on a segment of the BNSF line that did not transport coal before, through urban neighborhoods that never had experience with coal as a commodity on the railway, and into a port facility (FSD) that has never handled coal. Being this is a "first" in a number of fronts, expectations are appropriately high that the proponents will exercise very careful considerations with respect to the project's impact on the health and safety of the public, as well as its environmental impact.

We were encouraged when Port Metro Vancouver indicated the requirement that Fraser Surrey Docks complete an Environmental Impact Assessment of the project that included an assessment of health impacts of the full project, not limited only to impacts from activity at FSD. After reviewing the report, we provide the following high-level feedback:

1. The SNC-Lavalin report is primarily a repackaging of work previously done by other consultants, primarily Levelton Consultants Inc., with limited additional analyses to address concerns raised by ourselves, the public and local governments.

2. Most of the conclusions in the report about potential environmental and health impacts rely upon modeling work done by Levelton i.e. "Air Quality Assessment". We are concerned about the underlying assumptions that informed that model, which were not assessed critically by SNC-Lavalin.
3. The assessment of potential health impacts is particularly disappointing, and receives minimal attention in the document. Of note, much greater consideration is given to the potential effects of the project on plants, fish and wildlife than to people. The report does not meet even the most basic requirements of a health impact assessment. SNC-Lavalin has included a 4-page summary describing general air toxins and their known health effects, but no link to this project. The appendix includes a short letter written by a toxicologist, Dr. Leonard Ritter, with his opinion about the potential health impacts of coal dust. The letter is based on the assumption that the Levelton model is accurate, and includes only a single reference pertaining to the potential health impacts of coal dust. No discussion is included of any other potential health impacts. This single toxicologist's opinion does not meet the standards of a health impact assessment.
4. The report does not deal with the full scope of the project, from the time coal crosses the Canadian border to its transport and loading at Texada Island.

Based on these shortfalls, this report adds little to the information we require to determine the potential health impacts of the project and does not allow us to address legitimate concerns raised by members of the public and local governments.

We would still be very willing to meet with SNC-Lavalin to identify the parameters required to do an appropriate assessment of the potential health effects of the project, and we urge Port Metro Vancouver to ask Fraser Surrey Docks to revisit this report with that recommendation.

In addition to these general comments, we provide the following specific feedback on this draft of the report. Firstly, we ask that the May 27th 2013 letter to Port Metro Vancouver from Dr. Van Buynder Chief Medical Health Officer for Fraser Health, is included as an appendix, and that those concerns outlined in the letter are addressed in the report.

Since the May letter, we understand that a number of revisions has been made to the project with the intention to at least partially address the concerns. It is with this in mind that we provide the following additional comments.

1. The Spatial , Population, and Temporal Scope of the EIA

• Spatial

The draft EIA primarily covers the FSD site and the immediate surrounding areas on land and water. While we understand the limited jurisdiction Port Metro Vancouver has and that this EIA is primarily to address Port Metro Vancouver's requirements, it is still disappointing that the proponent (FSD) chose not to include the Canadian side of the project supply chain from the border to Texada Island in the EIA. Locations where potential health impacts could be of concern are not limited to the FSD site and its vicinity. For the health and safety of the public, the scope of this EIA should not be limited to the construction and operations that will occur at the FSD site. As Dr. Van Buynder pointed out in his May 27th letter, "the public are particularly intolerant of piecemeal approaches to major projects". This EIA will not be credible to the public unless it covers the entire geographic area in which this project will operate within British Columbia.

- **Population.**

The draft EIA provided only general descriptions of the population and growth trends for Surrey and Delta. While the document correctly identified children and the elderly as two of the vulnerable populations who could be more sensitive to project impacts such as air quality degradation, the document did not provide much detail on the sizes and locations of potentially sensitive population groups along the rail corridor from White Rock to FSD. The air dispersion modeling in appendix VIII did include sensitive receptors (locations of schools, child care and hospitals) in a 20km x 20km domain. However only the FSD emissions were included in the dispersion model. Indeed the distribution of the sensitive receptors in the model suggests that vulnerable populations are located all along the rail corridor and that modeling emissions from FSD only is not adequate.

As the draft EIA showed, the populations of Surrey and Delta are increasing. Yet the document did not include information on how these population increases may affect the size of the vulnerable population over the proposed life time of the project. Nor did the document include information on other important characteristics of the population such as socioeconomic status. The narrow geographic scope also meant the exclusion of populations near the proposed operations at Texada Island in the assessment. Indeed while the draft EIA rightly included extensive documentation and analyses of sensitive plants, and non-human animal species that may potentially be impacted by the project, the same effort was not given to describing the human population that may potentially be impacted.

Information on potentially vulnerable populations impacted by the project should be included and could be accessed through government sources. This information is essential to determine population health risk based on those exposed.

- **Temporal boundary**

The draft EIA states that this project has a life span of six years. At the same time however, the draft EIA also states that the FSD facility improvements will not be decommissioned after completion of the project. In addition, the planned expansion work at the Port Authority Rail Yard (PARY) is for accommodating two unit trains at a time. The draft EIA states: "the current capacity at the PARY is one unit coal train at a time, based on its capability to receive, stage, and depart trains." Even at the proposed maximum capacity for this project, there will be only one unit train a day arriving at FSD. The current project should not require tracks to accommodate two unit trains at a time. It is therefore unclear whether continuation and further expansion of the project beyond six years are being contemplated, or whether the capacity for one additional unit train is intended as temporary coal storage in lieu of the original emergency coal storage stockpile that was deleted from the revised proposal. Clarification of intent is critical. It is not appropriate for example to be limiting the EIA to consider only six years of operation and at the stated volume if the ultimate goal is to expand beyond six years and or current volume.

2. Air Quality

- **Coal dust**

We acknowledge that a number of positive changes have been proposed with respect to coal dust mitigation: elimination of the emergency storage stockpile, additional use of sealants during transit on the incoming coal trains, and the addition of sealant during transfer and

loading onto the barges. The proposed dust mitigation strategies will now rely much on the use of sealants, and load profiling. Neither data nor references are given in the draft EIA to support the efficiency claims for these strategies. They could be as efficient as claimed, but as written, it would appear the authors of the draft EIA simply took the values provided by the project proponent / product manufacturer without any effort to seek independent validation.

With respect to the health effects from coal dust, the WHO International Agency for Research on Cancer (IARC) recently announced the inclusion of outdoor air pollution in general as a Group 1 carcinogen. In making its decision IARC included both anthropogenic and natural sources of air pollution. (<http://www.thelancet.com/journals/lanonc/article/PIIS1470-2045%2813%2970487-X/fulltext>, http://www.iarc.fr/en/media-centre/pr/2013/pdfs/pr221_E.pdf) The Health Effects Institute also recently published its review on particulate (PM) air pollution. While the review found stronger evidence for the health effects from certain types of particulates, "the review panel concluded, however, that the studies do not provide compelling evidence that any specific source, component, or size class of PM may be excluded as a possible contributor to PM toxicity." (<http://www.healtheffects.org/Pubs/NPACT-ExecutiveSummary.pdf>) In other words, coal dust will contribute to the total toxicity from outdoor air pollution when it is present. Dr Ritter's comments with respect to the 1997 IARC monograph on coal should be considered in light of these recent scientific developments.

We note in the draft EIA mention of the use of a ten fold (10 X) factor for transforming occupational health limits to sensitive populations such as children and the elderly (pages 121, 124). The document goes on to intimate that this is a common and accepted practice. We request the document author to supply references from published literature to support this assumption specifically for coal dust.

A brief summary on the type and composition of the coal to be shipped is provided in the draft EIA. The description, unfortunately, does not contain information regarding mercury, lead, arsenic, and other possible contaminants as requested by Dr. Van Buynder in his May 27 letter. This could be important information for assessing the potential impacts on food grown by residents and farms along the railway track leading to the FSD site

Much was mentioned in the draft EIA and in the appendices on the 1986 ESL study on coal dust at Agassiz BC. This study is more than 25 years old. Air quality instrumentation and measurement protocols have advanced considerably since. It is unknown whether the older instruments and measurement protocols in 1986 would have under or over estimated the actual levels. More recent data do exist and would have been helpful to include them. In addition, averaging the particulate concentration over 24 hours will mask any shorter term concentration levels that may have short term health effects.

The revised plan has deleted the emergency coal storage stockpile. The revised plan however considers the possibility of loaded barges staying at the dockside in the event of high winds (> 40 km/hr) as a way of reducing the risk of blown dust during passage to Texada Island. In effect, during these weather events these barges would be providing a function similar to the original emergency stockpile. Although the dispersion modeling included loaded barges at dockside as a source of emission, it is unclear whether the modeling considered severe wind events when the barges may stay at dockside much longer than during normal operations. It would be important to determine the possible frequency of such events and to

model the impacts to air quality when the loaded barges stay at dockside for extended periods of time.

- **Diesel emissions**

The assessment of health impacts in the report focuses primarily on coal dust, with little consideration of the increase in diesel emissions from trains, barges, trucks and idling vehicles at railway crossings. Given that diesel emissions are associated with many acute and chronic health impacts, and are a known carcinogen, this is a significant deficiency of the report. We find this surprising because Levelton, in 2007, completed the "Air Toxics Emissions Inventory and Health Risk Assessment – Summary Report" on behalf of Metro Vancouver.

(http://www.metrovancouver.org/about/publications/Publications/Air_Toxics_Emission.pdf)

This report estimated about 350 cancers per one million population over a 70 year lifespan from diesel emissions in the Metro Vancouver region. Levelton could use this model to estimate the cumulative effects from the added diesel emissions from this proposed project for the potentially affected populations.

- **Dispersion modeling**

We defer the detailed review of the dispersion model to Metro Vancouver staff. Much of the EIA conclusions on the health effects from air emissions from this project are dependent on the validity of the dispersion modeling, and the interpretation of the intent of the Ambient Air Quality Objectives (AAQO). The BC Government has this to say regarding the use of the AAQO: "As even low levels of air pollution can affect some individuals, air quality objectives should not be viewed as levels we can "pollute up to," but levels to stay well below."

(<http://www.bcairquality.ca/regulatory/air-objectives-standards.html>) Moreover, in setting the AAQO, the BC Government considers other factors besides health evidence. The final AAQO is an integration of "information from the risk assessment with economic and technical factors as well as ethical, social, legal, ecological and achievability considerations".

(<http://www.bcairquality.ca/reports/pdfs/aqo-framework-information-sheet.pdf>) Furthermore, the AAQO is only meant as a guide for decision making.

(<http://www.bcairquality.ca/regulatory/air-objectives-standards.html>). It is therefore inappropriate for this EIA document to use the AAQO as the definitive criteria to characterize the level of health effects from the air quality predictions.

We have already mentioned above that there is a lack of information in the EIA regarding the efficiency of the dust sealants and other coal dust mitigation strategies, and therefore it is impossible for us to determine whether the emission factors used for the model are correct. We have also noted that the time and spatial domains chosen for the model will influence whether the model will be able to assess any possible short term health effects. While using the 24 hours and annual averages will allow comparison to existing air quality objectives over a wide area, they are not as useful for assessing short term local impacts. In addition, there is no known threshold below which particulate air pollution have no health effects. There are health effects even at the current air quality objectives. Concentration response functions are available to assess health effects at different levels of different air pollutants. It is much more informative to derive estimates of additional health effects directly from a validated model as opposed to simply commenting on whether the existing air quality objectives will be exceeded.

- **South Fraser Health Region 1998 Letter**

The draft EIA included a 1998 letter to the Corporation of Delta from Dr Robert Strang, then Associate Medical Health Officer, South Fraser Health Region. The letter was in response to concerns regarding dust originating from Westshore Terminals affecting the health of Delta residents – in particular Tsawwassen children. The letter presented data on respiratory illness and asthma related hospitalization and deaths, comparing different areas in the former South Fraser Health Region and elsewhere in BC. The spatial unit of analysis used was the Local Health Area (LHA), which is equivalent geographically to the local school district. The letter concluded that the information available did not point to concerns about higher levels of asthma or respiratory disease in Delta compared to other areas in the South Fraser Health Region or the province. LHA 37 is equivalent in size and geographic location as the Delta School District (SD 37). LHA 37 is a large geographic area, and includes three town centers (Tsawwassen, Ladner, and North Delta), with even the closest of them (Tsawwassen) still some distance away from the Westshore Terminals. If there were any health effects associated with dust exposure for the smaller number of people who lived closer to the coal port or along the railway tracks that served the port, the signals would have been drowned out by the health experiences of the large population centers. As well, the analysis did not adjust for socioeconomic status, smoking status or other potential confounders when comparing the different LHAs. The geographic location of Tsawwassen in relation to Westshore Terminals is also different from the geographic relationship between FSD and its neighboring residential areas. Dr. Strang provided no conclusion in his letter about whether or not populations living in close proximity to coal dust transport and handling had suffered undue health effects, nor was the analyses included appropriate to answer that question. It is not appropriate to use the letter as evidence for assessing health effects for the FSD project.

- **Air Quality Monitoring**

Dr Van Buynder in his May 27 letter emphasized the need for adequate air quality monitoring to verify the dispersion modeling results should the project proceed. It is not clear reading the draft EIA whether the entire monitoring proposal in Levelton's May 2013 draft Air Quality Management Plan is to be carried forward. Even if it does, the single air quality monitor station proposed outside of the FSD site is not adequate. Additional air quality monitoring at strategic locations on the rail corridor are needed to resolve issues including coal dust falls, train diesel emissions, and motor vehicle emissions at rail crossings given the increased wait times. Also in the earlier May 2013 draft Air Quality Management Plan barge based monitoring for particulates was proposed. Again, it is unclear in the draft EIA whether this is still the case.

3. Emergency Vehicle Access

The draft EIA suggests that the current arrangements for ensuring timely access across rail crossings for emergency vehicles are adequate. Without additional information, we remain concerned. We recommend that the proponent asks BC Ambulance Service, the Surrey and Delta Fire Departments and other appropriate first responders to review the proposal for adequacy with respect to emergency response access.

4. Recreation, Livability, Amenities

The impact of dust falls from passing coal trains on neighborhood livability is not addressed in the draft EIA. Complaints of coal dust soiling windows, covering outdoor structures have been recorded from residents living close to railway tracks in other locations such as was in Agassiz. (The Canadian Council of Ministers of the Environment. "*A Study of Fugitive Coal*

Dust Emissions In Canada". 2001) The dispersion modeling presented in the EIA is not useful for predicting dust fouling of outdoor living spaces in residential areas and in recreational amenities such as trails that run parallel to segments of the BNSF tracks. There is also no information on the increased potential for injury to the public at rail crossings. Neither baseline injury data nor possible future impacts are presented.

The EIA described some general strategies that the project will be using to mitigate noise impact. In order to ensure that these strategies will work, baseline noise measurements and ongoing noise monitoring during both the construction and operation phases of the project are needed

5. Public Engagement

Information contained in the draft EIA and its appendices do not permit an assessment on the adequacy of the public engagement process. Written public comments were summarized, but no attempt was made to map the public feedback, including feedback at public meetings, to the draft EIA so that reviewers can tell how the concerns were addressed. Importantly, there was no information with respect to actions or decisions by local government following presentations from FSD to the mayors and councils. We remind Port Metro that the Board of Directors of Metro Vancouver has called for a health impact assessment of the project, and that two Lower Mainland municipalities have recently passed motions banning coal from municipal lands. These decisions are important context that was not noted amongst the public feedback. Nor was recent correspondence from the Fraser and Vancouver Coastal Chief Medical Health Officers found in the appendices, even though a letter from an Associate Medical Health Officer written some 15 years ago was included.

A noise complaint response process for the FSD site of the project is described in the draft EIA. An air quality complaint tracking system for the FSD site is included in the May 2013 draft Air Quality Management Plan. There is a need for a coordinated complaint response system for this project that covers concerns arising from both within and without the FSD site. It is unclear whether such is being planned. The absence of coordinated and timely response to complaints will frustrate the public and potentially lead to unnecessary escalation of concerns.

In summary, we were pleased that Port Metro Vancouver requested a more comprehensive impact assessment for this direct transfer coal facility project. Unfortunately, this draft EIA fell well short of adequately addressing the human health impacts of the proposal. We, as the Medical Health Officers responsible for protecting the public health in the regions impacted by the project are being asked by the public and the local governments whether this project will have health impacts. Regrettably we are no closer to answering this question, even having reviewed the draft EIA. In our letter of September 25, 2013 we requested that health authorities be provided with an opportunity to assist in the scoping of the EIA. This offer still stands and we once again urge the project proponents (FSD and its business partners in this project) to conduct a health impact assessment that includes all of the project components from the U.S.-Canada border to Texada Island.

Health Impact Assessments are designed to minimize the negative and maximize the positive impacts of large projects. We believe it is the most appropriate and socially responsible approach for the proponents to address our concerns and those of the public.

Sincerely,



Paul Van Buynder, MBBS, MPH, FAFPHM Chief Medical Health Officer and Program Medical Director, Public Health Fraser Health Authority

Patricia Daly MD, FRCPC Chief Medical Health Officer and Vice-President, Public Health Vancouver Coastal Health
--

CC: Dr. Perry Kendall, Provincial Health Officer
Roger Quan, Air Quality Policy & Management Division Manager, Metro Vancouver
Jurgen Franke, Director, Engineering and Maintenance, Fraser Surrey Docks –
contact for proponent (jurgenf@fsd.bc.ca)

Attachments:

1. May 27 2013 letter from Dr. Van Buynder to PMV
2. September 25 2013 letter from Drs. Van Buynder and Daly to PMV

NO: **R185**

COUNCIL DATE: **October 20, 2014**

REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **October 20, 2014**

FROM: **City Solicitor**

FILE: **8710-01**

SUBJECT: **Fraser Docks Coal Transfer Facility – Application for Intervener Status**

RECOMMENDATION

It is recommended that Council authorize and approve the City of Surrey applying for Intervener status in Federal Court Action No. T-1072-14, being an application for judicial review of the decision of Vancouver Port Authority to issue a Project Permit to construct and operate a Direct Transfer Coal Facility in Surrey.

INTENT

The intent of this report is to seek instructions from Council to file a Notice of Motion seeking Intervener status in Federal Court Action No. T-1072-14.

BACKGROUND

As Council is aware, Vancouver Fraser Port Authority (the "Port") made a decision to issue Project Permit 2012-072 (the "Permit" or "Permit Decision") to Fraser Docks Limited Partnership (the "Fraser Surrey Docks") on August 21, 2014. The Permit Decision authorizes Fraser Surrey Docks to construct and operate a Direct Transfer Coal Facility in Surrey.

An application seeking judicial review of the Permit Decision has been made by the Communities and Coal Society, Voters Taking Action on Climate Change, Christine Dujomovich and Paula Williams (the "Applicants") and filed in Federal Court by Ecojustice Canada Society, counsel for the Applicants. Among other things, the application challenges the Permit Decision on the basis of the Port's failure to consider certain environmental effects as required by the Canadian Environmental Assessment Act, 2012, SC 2012, c. 19, s.52 (the "CEAA 2012") and that the conduct of the Port and its officers and staff during the Project review process violated the principles of natural justice, procedural fairness and the rule against bias. Attached as Appendix "I" is a copy of the Notice of Application filed on behalf of the Applicants by Ecojustice.

At the recent 2014 UBCM Convention the following resolution was endorsed as amended by the membership:

B92 Environmental Assessment for Coal Transport

Therefore be it resolved that a comprehensive environmental and health impact assessment for the shipment of thermal coal by rail and over coastal waters be conducted;

And be it further resolved that an appropriate federal and/or provincial agency be named to monitor rail transport, barge transfer and transport of thermal coal, over coastal waters to ensure oversight and implementation of environmental and health protection measures.

DISCUSSION

The determination and issuance of the Permit requires compliance with the CEEA 2012 which requires that the Port determine that the Project is not likely to cause significant adverse environmental effects. This includes a consideration of environmental effects identified in s.5 of the CEEA 2012. Section 5(2)(a) of CEEA 2012 requires the Port to consider a change caused to the environment which is directly linked or necessarily incidental to the decision to issue a permit. The Notice of Application filed by Ecojustice on behalf of the Applicants, sets out that the Port acted without jurisdiction, beyond its jurisdiction and erred in law in making the CEEA determination by excluding or not considering relevant environmental effects.

Concerns have been raised about local environmental and health impacts as well as global impacts of the Project. These include concerns related to dust from train movements and coal transfer operations, chemicals used in train cars and barges for dust suppression, soil and water contamination and risks related to fires, explosions, spills and collisions. Concerns have also been raised related to local engine emissions from trains and tug boats and global Greenhouse Gas Emissions from burning the shipped coal. These concerns were not properly considered by the Port as relevant environmental effects in its Permit Decision.

As a matter of common law, the determination and issuance of the Permit also requires that the conduct of the Port and its officers and staff be in compliance with principles of natural justice, procedural fairness and the rule against bias. The Notice of Application attached as Appendix "I" also identifies the facts relied upon by the Applicants in support of this ground of attack on the Permit Decision.

Section 109 of the Rules of Federal Court allows the Court to consider a motion by any person to intervene in a proceeding:

Intervention

Leave to intervene

109. (1) *The Court may, on motion, grant leave to any person to intervene in a proceeding.*

Contents of notice of motion

(2) Notice of a motion under subsection (1) shall

- (a) set out the full name and address of the proposed intervener and of any solicitor acting for the proposed intervener; and*
- (b) describe how the proposed intervener wishes to participate in the proceeding and how that participation will assist the determination of a factual or legal issue related to the proceeding.*

Directions

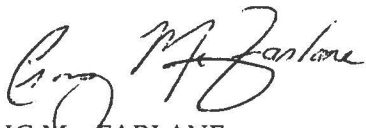
(3) In granting a motion under subsection (1), the Court shall give directions regarding

- (a) the service of documents; and*
- (b) the role of the intervener, including costs, rights of appeal and any other matters relating to the procedure to be followed by the intervener.*

Pursuant to this Rule, the City of Surrey may seek Intervener status which may be granted with leave of the Court. If the Court grants leave, it will give directions regarding the role of the City of Surrey as an intervener. By seeking intervener status, the City will be in a better position to advocate for proper consideration of environmental, health and safety risks associated with the Project.

CONCLUSION

It is recommended that Council authorize and approve the City of Surrey applying for Intervener status in Federal Court Action No. T-1072-14, being an application for judicial review of the decision of Vancouver Port Authority to issue a Project Permit to construct and operate a Direct Transfer Coal Facility in Surrey.

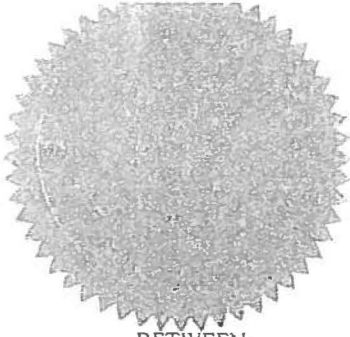


CRAIG MacFARLANE
City Solicitor

TC:ld

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LJD 10/21/14 9:48 AM

APPENDIX "I"



Court File No. T-1972-14

FEDERAL COURT

BETWEEN:

COMMUNITIES AND COAL SOCIETY, VOTERS TAKING ACTION ON
CLIMATE CHANGE, CHRISTINE DUJMOVICH and PAULA WILLIAMS

Applicants

AND:

ATTORNEY GENERAL OF CANADA, VANCOUVER FRASER PORT
AUTHORITY and FRASER SURREY DOCKS LIMITED PARTNERSHIP

Respondents

APPLICATION UNDER SECTIONS 18 and 18.1 OF THE *FEDERAL COURTS
ACT*, RSC 1985, c F-7

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the applicants. The relief claimed by the applicants appears on the following pages.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicants. The applicants request that this application be heard at **Vancouver, British Columbia**.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicants' solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the

Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: SEP 19 2014

Issued by: M. Hennessy **MODELISA HENNESSY**
REGISTRY OFFICER
AGENT DU GREFFE

Address of
local office: Federal Court
Vancouver Registry
701 W Georgia St.
Vancouver, BC
V7Y 1B6

TO: Courts Administration Service
P.O. Box 10065, 3rd Floor
701 West Georgia Street
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ATTORNEY GENERAL OF CANADA
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VANCOUVER FRASER PORT AUTHORITY
100 The Pointe,
999 Canada Place
Vancouver, British Columbia
CANADA V6C 3T4

FRASER SURREY DOCKS LP
c/o Fraser Surrey Docks Ltd.
Suite 2300, Bentall 5
550 Burrard Street, Box 30
Vancouver, BC V6C 2B5

APPLICATION

This is an application for judicial review of the decision of Vancouver Fraser Port Authority (the "Port") to issue Project Permit 2012-072 (the "Permit" or "Permit Decision") to Fraser Surrey Docks Limited Partnership ("Fraser Surrey Docks") on August 21, 2014. The Permit Decision authorizes Fraser Surrey Docks to construct and operate a Direct Transfer Coal Facility in Surrey, British Columbia (the "Project"). This application is in respect of the Port's failure to consider certain environmental effects as required by the *Canadian Environmental Assessment Act, 2012*, SC 2012, c 19, s 52 ("*CEAA 2012*") and that the conduct of the Port and its officers and staff during the Project review (the "Project Review Process") violated the principles of natural justice, procedural fairness and the rule against bias.

The applicants make application for:

- I. An order or orders:
 - (a) declaring that the Port erred in its determination under subsection 67(a) of the *CEAA 2012* that the Project would not cause significant adverse environmental effects (the "*CEAA 2012 Determination*");
 - (b) declaring that the Port failed to consider changes to the environment that will be caused by the combustion of the coal that will be exported outside Canada, contrary to the requirements of subsection 5(2)(a) of *CEAA 2012*;
 - (c) declaring that the Port and its officers and staff failed to observe the principles of natural justice, procedural fairness and the rule against bias, in the Project Review Process;

- (d) quashing or setting aside the Permit;
 - (e) quashing or setting aside the *CEAA 2012* Determination;
 - (f) referring the permit application back to the Port to be determined in a manner that complies with the principles of natural justice, procedural fairness, and the rule against bias, and such other directions as the Court considers appropriate; and
 - (g) referring the permit application back to the Port to reconsider the Project in accordance with subsections 5(2)(a) and 67(a) of the *CEAA 2012*.
2. In the event that this application is dismissed, an order that the Applicants shall not be required to pay costs to the Respondents pursuant to Rule 400 of the *Federal Courts Rules*.
 3. Costs.
 4. Such further and other relief as this Honourable Court may deem just.

The grounds for the application are:

The Parties

1. The applicant Communities and Coal Society (“**Communities & Coal**”) is a non-profit society registered under British Columbia *Society Act* RSBC 1996, c 433 (“*Society Act*”). **Communities & Coal** was created as a result of genuine community concern about the detrimental environmental and health effects of the Project. **Communities & Coal** consists of persons who live in the communities in and around where the Project would operate and who are directly affected by the Permit Decision.

2. The applicant Voters Taking Action on Climate Change (“VTACC”) is a non-profit society registered under the *Society Act*. VTACC has a genuine interest in encouraging action on climate change and is particularly concerned with the climate, environmental and health impacts from the combustion of coal.
3. The applicant Christine Dujmovich (“Ms. Dujmovich”) resides in Surrey adjacent to the Project site and is directly affected by the environmental and health impacts of the decision to issue the Permit.
4. The applicant, Paula Williams (“Ms. Williams”) resides in Surrey and is directly affected by the environmental and health impacts of the decision to issue the Permit.
5. The Port does business as Port Metro Vancouver and is established by Letters Patent pursuant to the *Canada Marine Act* SC 1998, c 10.
6. Fraser Surrey Docks Limited Partnership is the proponent of the Project and a limited partnership registered in British Columbia on December 27, 2000. Fraser Surrey Docks Limited is the general partner of Fraser Surrey Docks Limited Partnership.

The Project

7. On June 13, 2012, Fraser Surrey Docks submitted a project permit application (the “**Permit Application**”) to the Port for the construction and operation of the Project.
8. The Permit Application seeks to develop a direct transfer coal facility (the “**Facility**”) that would export up to four million metric tonnes of thermal coal per year.

9. The coal will be shipped by train from Wyoming's Powder River Basin to the Facility for export and combustion outside of Canada. At the Facility, the coal will be transferred from trains to barges. The loaded barges will be towed by tug boats down the Fraser River and then north to Texada Island where the coal will be stored until transferred to deep-sea vessels and exported.
10. Section 27 of the *Port Authorities Operations Regulations*, SOR/2000-55 issued under the *Canada Marine Act*, empowers the Port to issue permit authorizations to carry out certain activities within the Port's jurisdiction.

The Project Review Process

11. The Port's Guide to Project Review guided the review of the Project. The Project Review Process occurred between June 2012 and August 2014. The Project Review Process addressed the issuance of the Permit and the *CEAA 2012* Determination.
12. A Planning Review and an Environmental Assessment Procedure were part of the Project Review Process. The Port also considered an environmental impact assessment (the "EIA") submitted by Fraser Surrey Docks. Once the Planning Review and the Environmental Assessment Procedure were completed, a Project Review Report was prepared.
13. The Project Review Process includes a Project Review Committee to consider, recommend or decide on the Permit application.
14. There was significant and increasing public concern over the course of the review, including frustration with the Project Review Process. Between November 2012 and April 2013, the Port had received approximately 815 emails and letters expressing concerns about, and opposition to, the Project.

15. Throughout 2013, Communities & Coal and VTACC organized meetings, public forums, door to door petitions and community events to raise awareness of the climate, environmental and health impacts of the Project.
16. The applicants were among the many concerned stakeholders, including regional health authorities and other regional government bodies, who made submissions to the Port during the Project Review Process.
17. In their comments to the Port, the applicants raised concerns about climate change, environmental, and health impacts associated with the Project. These concerns included the manner in which the Project Review Process was conducted, alleging that the principles of natural justice, procedural fairness and the rule against bias had been breached.
18. On November 18, 2013, the Port released the EIA for a 30 day public comment period. Over 3,000 comments were submitted, the majority of which expressed concern about the Project.
19. On August 21, 2014, the Port issued the Permit to Fraser Surrey Docks. At the time that the Permit was issued, the Port also published related decision documents on its website, including a Project Review Report, an Environmental Review Decision Statement, a Human Health Risk Assessment, a Mitigation Strategy Description and a Public Comments Response Memo.
20. The Project Review Report does not identify the members of the Project Review Committee. The Project Review Report recommended that the Project be approved subject to identified conditions.
21. The Port did not provide any documentation regarding its approval of the Project Review Report's recommendation. After receiving the Project Review Report the

Port issued the Permit, which was signed by Port President and Chief Executive Officer Robin Silvester.

Grounds of Review – the conduct of the Port and its officers and staff violated the principles of natural justice, procedural fairness and the rule against bias

22. In exercising its statutory and administrative duties under *CEAA 2012* and the *Canada Marine Act*, the Port and its officers and staff failed to adhere to the principles of natural justice, procedural fairness and the rule against bias that it was required by law to observe.
23. The Port has a Code of Conduct for Directors and Officers (the “**Code of Conduct**”) found in the Port’s Letters Patent. Section 1.2(c) of the Code of Conduct emphasizes the principle that public confidence and trust in the integrity and impartiality of the Port may be as equally compromised by the appearance of a conflict as with an actual conflict.
24. Port officers and staff, including Robin Silvester, Peter Xotta and Greg Yeomans, made comments violating the rule against bias at various points during the review. The comments indicate that these individuals predetermined the outcome of the Project Review Process, the Permit Decision and the *CEAA 2012* Determination.
25. The executive compensation program links the economic performance of the Port to the compensation of executives. The Project will increase revenues for the Port. Officers receive executive compensation through this program. The financial link between the Project and the pecuniary interests of officers tasked with making a determination under *CEAA 2012* and under the Project Review violated the rule against bias.
26. Prior to and throughout the Project Review Process, the Port and its officers and staff maintained institutional affiliations with and sponsorship of organizations.

These organizations were actively promoting coal and the coal industry.

27. Further, through the Project Review Process, the Port and its officers and staff collaborated closely with Fraser Surrey Docks and Fraser Surrey Docks' contractors regarding messaging and public relations about the Project. This included sharing information related to the activities of groups and individuals opposed to or with concerns regarding the Project.
28. On December 17, 2013 Communities & Coal and VTACC wrote to the Port, expressing concern over bias and alleging that the conduct of the Port and its officers and staff gave rise to a reasonable apprehension of bias.
29. On August 6, 2014, Communities & Coal and VTACC wrote again to the Port, alleging that the Port and its officers and staff, and the Project Review Committee gave rise to concerns about actual or perceived bias.
30. The Port has not responded to any of the bias allegations, despite having been expressly so advised by the applicants Communities & Coal and VTACC.
31. As a consequence of making its decision to issue the Permit, the Port and its officers and staff failed to comply with the principles of natural justice, procedural fairness and the rule against bias that it was required by law to observe.

Grounds of Review – the CEAA 2012 Determination excluded certain environmental effects

32. The Port acted without jurisdiction, beyond its jurisdiction and erred in law in making the *CEAA 2012* Determination and in issuing the Permit.

33. Section 67(a) of *CEAA 2012* requires that the Port determine that the Project is not likely to cause significant adverse environmental effects prior to making the Permit Decision.
34. Environmental effects that must be considered under s. 67 are identified in section 5 of *CEAA 2012*.
35. Section 5(2)(a) of *CEAA 2012* requires the Port to consider a change caused to the environment which is directly linked or necessarily incidental to the decision to issue the Permit.
36. The Port received comments throughout the Project Review Process regarding issues related to climate change, global warming and the export of coal.
37. The Port acknowledges in its Environmental Review Decision Statement that the end use of the coal is a greenhouse gas ("GHG") generator.
38. The Project will transport up to 4 million tonnes of thermal coal for export and combustion in Asia.
39. Combustion will result in GHG emissions. Emissions associated with coal combustion are a major source of GHGs and present significant harm to the environment.
40. The combustion of 4 million tonnes of thermal coal is roughly equivalent to 1% of Canada's 2012 GHG emissions.
41. Both the Environmental Review Decision Statement and the Project Review Report contained the Port's *CEAA 2012* Determination. The Project Review Report concluded that the Project was not likely to cause significant adverse

environmental effects. The *CEAA 2012* Determination did not address the environmental effects of the end use of coal.

42. The Port acted without jurisdiction, beyond its jurisdiction and erred in law by failing to consider the end use of the coal as an environmental effect of the Permit Decision as required by s. 5(2)(a), and therefore erred in making its *CEAA 2012* Determination, and in issuing the Permit.

General Grounds of Review

43. The Applicants rely on sections 18 and 18.1 of the *Federal Courts Act*, RSC 1985, c F-7, the *Federal Courts Rules*, SOR/98-106, and the *Canadian Environmental Assessment Act, 2012*, the *Canada Marine Act* and the *Port Authorities Operations Regulations*.
44. Such further and other relief and additional grounds as counsel may identify and this Honourable Court may consider.

This application will be supported by the following material:

1. The affidavit on behalf of VTACC to be served.
2. The affidavit on behalf of Communities & Coal to be served.
3. The affidavit of Christine Dujmovich to be served.
4. The affidavit of Paula Williams to be served.
5. The affidavit of Matt Horne to be served.
6. Such further affidavits as counsel may advise and this Honourable Court may allow.
7. The record before the Port when the Port made the decision at issue in this proceeding.

8. Such further and additional materials as counsel may advise and this Honourable Court may allow.

Rule 317 Request:

The applicants request that the Port, the Minister of the Environment, the Minister of Fisheries and Oceans, the Minister of Transport and the Canadian Environmental Assessment Agency send a certified copy of the following material not in the applicants' possession:

1. The record of materials considered or relied on by the Port in making the Permit Decision and the *CEAA 2012* Determination and all documents that could give rise to a violation of the rule against bias even if those documents were not directly before the Port.
2. The record of materials considered or relied on by the Project Review Committee in relation to the Project, the record of any decision or recommendation made by the Project Review Committee in relation to the Project, the membership and composition of the Project Review Committee for this Project, and all documents that could give rise to the issue of the rule against bias even if those documents were not directly before the Project Review Committee.
3. The record of correspondence and communications between the Port, any of its officers and staff, and government ministries or agencies in relation to the Project.
4. The record of correspondence and communications between the Port, any of its officers and staff and Fraser Surrey Docks or Fraser Surrey Docks' contractors, in relation to the Project and all documents that could give rise to a violation of the rule against bias even if those documents were not directly

before the Port.

5. The Corporate Scorecard referred to in the Port's 2013 Executive Compensation Program summary, any other Port policies relating to compensation, incentive plans, or bonuses for Port officers and staff, including information on whether and the extent to which these plans and policies are affected by the economic performance of the Port.
6. Information indicating the circumstances under which Port officers and staff are eligible for additional compensation, including the names of those officers and staff.
7. Any record of material establishing the economic benefits of the Project accrued through fees, leases, rents, or any other form of compensation to the Port.

Date: September 19, 2014

Karen Campbell

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Public Comment Period

Consideration to Amend Permit No. 2012 – 072
Direct Transfer Coal Facility

May 4 – 19, 2015

Discussion Guide and Feedback Form

Consideration to Amend Permit No. 2012 – 072 Direct Transfer Coal Facility

On August 21, 2014, Fraser Surrey Docks LP (FSD) was granted a permit by Port Metro Vancouver that gives it conditional approval to build and operate a Direct Transfer Coal Facility within its existing lease area.

FSD is considering applying to amend its existing permit. The proposed amendment would allow FSD to load coal directly from the facility to ocean-going vessels (OGVs). Using OGVs would allow FSD to eliminate or reduce the number of barges required. The proposed amendment to the existing permit would have no impact on the volume of coal permitted to be shipped through FSD (4 million metric tonnes per year).

This Discussion Guide outlines aspects of the existing permit FSD is considering applying to amend, and seeks comments on the proposed scope of studies associated with the potential amendment to Permit No. 2012 – 072.

How Can I Provide Feedback?

- Provide a written submission
- Submit your Feedback Form:
 - Online
 - By email
 - By mail

Correspondence and Inquiries

- **Telephone:** 604-891-1695
- **Web:** www.fsd.bc.ca/amendment
- **Email:** amendment@fsd.bc.ca
- **Mail:** PO Box 2233 Vancouver Main,
Vancouver, BC V6B 3W2

Reporting

- Community and stakeholder feedback will be summarized and posted online at www.fsd.bc.ca/amendment

Port Metro Vancouver Permit Process

Port Metro Vancouver is the permitting authority for the proposed amendment.

On August 21, 2014 Port Metro Vancouver issued a Project Permit to Fraser Surrey Docks LP (FSD) for the development of a Direct Transfer Coal Facility to handle up to 4 million metric tonnes of coal, per year.

The permitting process considered environmental and technical information, as well as First Nations, municipal, agency, and community input.

In completing its federal environmental review, and as per Section 67 of the *Canadian Environmental Assessment Act 2012 (CEAA 2012)*, Port Metro Vancouver considered the information and the proposed mitigation measures provided by FSD, along with other relevant information. Port Metro Vancouver concluded that, with the implementation of proposed mitigation measures and subject to the conditions of the permit, the project is not likely to cause significant adverse environmental effects.

Fraser Surrey Docks LP (FSD) is the largest employer on the Fraser River waterfront, with more than 300 full-time employees. FSD has been a major employer and contributor to local communities for over 50 years, handling over 3 billion dollars-worth of goods annually. FSD has directly contributed over 280 million dollars to B.C. communities over the last 5 years through wages, taxes and buying of local goods and services.

There will be two opportunities to provide input regarding the proposed amendment. FSD will consider your input, along with information provided by technical experts, as part of its consideration to apply for an amendment to the existing permit.

Round 1 Public Comment Period

Consideration to Amend Permit No. 2012 – 072
Review of proposed changes to the existing permit and proposed scope of studies.

May 4 – 19, 2015

Round 2 Public Consultation

If FSD submits the proposed amendment, the public will be provided with an additional opportunity to review and comment on changes to the project design and on the final results of the studies.

Overview of Changes Under Consideration

Consideration to Amend Permit No. 2012 – 072 Direct Transfer Coal Facility

Fraser Surrey Docks LP (FSD) is considering applying to amend its existing permit (Permit No. 2012 – 072) that gives it conditional approval to build and operate a Direct Transfer Coal Facility within its existing lease area.

The application to amend the existing permit would have no impact on the volume of coal permitted to be shipped through FSD (4 million metric tonnes per year).

The proposed amendment would allow FSD to load coal directly from the facility to ocean-going vessels (OGVs) and would allow FSD to eliminate or significantly reduce the number of barges required. One loaded Panamax size OGV can carry approximately four train loads of coal, and the same volume as eight loaded barges (i.e. 1 OGV = 8 barges).

- The proposed amendment under consideration by FSD would increase the current size and height of the loader, allowing for direct loading to OGVs.
- Use of OGVs would replace most or all barges. If approved, FSD plans to replace all barges with OGVs, but would retain barging as a potential secondary option.
- It is anticipated that the use of OGVs would further mitigate the potential for fugitive dust, as coal would be transported in a closed hatch.
- The conveyance system, receiving pit and rail tracks would be shifted on site to accommodate the larger vessel loader.
- The footprint of the facility area would decrease, which would reduce the amount of rain water runoff collected.

**Ocean-going vessels would eliminate or reduce the number of barges required.
One ocean-going vessel holds the same volume as eight barges.**



The following are potential shipping scenarios based on 4 million metric tonnes per year:

Potential Shipping Scenarios	Loaded Trains / Year	Loaded OGVs / Year*	Loaded Barges / Year*
Current permit approval	320	0	640
25% shift to OGVs (with proposed amendment)	320	20	480
50% shift to OGVs (with proposed amendment)	320	40	320
75% shift to OGVs (with proposed amendment)	320	60	160
100% shift to OGVs (with proposed amendment) FSD's preferred operational scenario	320	80	0

* Numbers represent return-trip vessel movements.



Potential Modifications to Original Project Design:

To accommodate a larger vessel loader, the conveyance system, receiving pit and rail tracks would be shifted in order to achieve proper angles and elevations. Primary changes would be as follows:

Project Features	Approved Permit	Proposed Amendment Application
Volume of coal shipped	4 million metric tonnes / year	No change
Mode of shipping	1,280 barge movements / year based on 640 barge return trips	Use of OGVs to replace some or all barges
Marine Vessel Loader	14.3 metre (m) outreach (length of boom) from the edge of the berth and a maximum height of 15.0m	27.4m outreach from the edge of the berth and a maximum height of 36.2m
Receiving pit and building	A fabric building spanning a 17m-in-length bottom discharge pit with 125 tonne surge bin	Metal-clad building; shifted 12m east and 16m south Receiving building and pit dimension stay the same
Wastewater settling basins	A two-stage primary and secondary settling basin with an approximate capacity of 300 m ³	Shifted 37m west and rotated 90 degrees counter clockwise Dimensions for settling basins stay the same Also included is a 560,000 litre tank for contingency storage purposes for storm events Basins would reside under the Out Feed Conveyor for more effective use of space and water management practices
Dust mitigation	Dust mitigation measures meet regulatory standards	Additional dust mitigation through use of closed hatches on OGVs, spraying of empty outbound railcars
Overall water catchment area (Facility footprint)	5,340 m ²	Decreased to 3,680 m ² Estimated to reduce water runoff by 10-15%
Rail tracks	Relocation of the front gate	Adjustments to the rail loop; removal of Shed 4 and no relocation of the front gate
Jobs	Estimated 20-25 full-time jobs	An increase of up to 20 additional full-time jobs (total of up to 40-45 new full-time jobs) due to extra shifts required to load OGVs (based on 100% shift to OGVs)

Studies

Fraser Surrey Docks LP (FSD) is working with consultants, who are subject-matter experts, to update studies that were undertaken for the existing permit (Permit No. 2012 - 072). The updated studies will identify and analyze any potential impacts of the proposed amendment.

Studies to be updated with respect to the proposed amendment include:

1. Human Health Risk Assessment (HHRA) – SNC-Lavalin Inc. (Environment & Water)
2. Environmental Impact Assessment (EIA) – SNC-Lavalin Inc. (Environment & Water)
3. Air Quality Assessment (AQA) – Levelton Consultants Ltd.
4. Marine Risk Assessment – DNV (Det Norske Veritas)
5. Environmental Management Plan (EMP) – Soleil Environmental Consultants Ltd.
6. Water Management Plan – Omni Engineering Inc.
7. Fire Life Safety Plan – Hatch Mott MacDonald
8. Spill Response Plan – prepared by Director of Engineering, Fraser Surrey Docks LP

Updated studies, as listed above, would be reviewed by Port Metro Vancouver, the regulating authority, as part of an application to amend Permit No. 2012 - 072.

FSD anticipates that Port Metro Vancouver will contract a third-party reviewer, Golder Associates Ltd., to assist in the review of the following studies:

- Human Health Risk Assessment (HHRA)
- Environmental Impact Assessment (EIA)
- Air Quality Assessment (AQA)

1. Human Health Risk Assessment (HHRA) – SNC-Lavalin Inc. (Environment & Water)

A Human Health Risk Assessment (HHRA) was undertaken for the original project design. Port Metro Vancouver referred the HHRA for review by an independent third party (Golder Associates Ltd.), prior to the approval of Permit No. 2012 – 072.

In consideration of the proposed amendment, SNC-Lavalin will undertake a review of the HHRA (July 2014) to understand the impact of the proposed amendment on health risks. Human health risk assessments are tools used to determine if people will be safe if they are exposed to substances that are in the environment, food, or consumer products. The review of the HHRA will look at a comprehensive list of substances which may be present in emissions that could arise from the proposed amendment.

The HHRA will be updated, in part, based on the results of the Air Quality Assessment (AQA) conducted by Levelton Consultants Ltd. (Levelton) for the proposed amendment. A comprehensive list of emission sources will be evaluated in the AQA including the proposed coal operations at Fraser Surrey Docks LP (FSD) (i.e. emissions from marine vessels, and fugitive dust generated from material transfer points, as well as during coal unloading and loading), and in-transit emission sources (including emissions from marine vessels on the Fraser River).

SNC-Lavalin has reviewed the HHRA and based on their understanding of the proposed amendment, determined that the following areas of the report that will require further analysis:

- The HHRA will be updated to reflect Levelton's AQA results;
- Exposure Point Concentrations (EPCs) will be interpreted based on the updated Levelton AQA results. EPCs are used to estimate exposures to fugitive dust and combustion emissions at specific geographic locations; and,
- Risk estimates associated with exposures to the emissions will be re-calculated based on updated EPCs, and the results of the HHRA will be reviewed and updated as necessary.

The remaining sections of the HHRA require only minor edits as they are accurately described and remain applicable with respect to the proposed amendment, such as the scope of the HHRA, project location, baseline and rail corridor EPCs and associated risk estimates.

To facilitate an update of the proposed amendment application, SNC-Lavalin will revise the July 2014 HHRA report, and summarize the revisions in a technical memorandum.

SNC-Lavalin will:

- Review the description of refinements to the project associated with the proposed amendment;
- Review the extent to which the HHRA accurately estimates human health risks, taking into account the refinements to the project associated with the proposed amendment;
- Describe and discuss the refinements to the project associated with the proposed amendment which are material to the HHRA; and,
- Review and analyze the extent to which mitigation measures should be updated, where applicable.

The original Human Health Risk Assessment (July 2014), and the scope and rationale documents (April 2015) provided by SNC-Lavalin in consideration of the proposed amendment can be found at www.fsd.bc.ca/amendment

2. Environmental Impact Assessment (EIA) – SNC-Lavalin Inc. (Environment & Water)

An Environmental Impact Assessment (EIA) was undertaken for the original project design. Port Metro Vancouver referred the EIA for review by an independent third party (Golder Associates Ltd.), prior to the approval of Permit No. 2012 – 072.

In consideration of the proposed amendment, SNC-Lavalin will undertake a review of the EIA (November 2013) to update the environmental impacts and proposed mitigation measures associated with loading coal directly onto OGVs as opposed to barges.

SNC-Lavalin has reviewed the EIA and, based on their understanding of the proposed changes to the project, have determined that the following sections will require further investigation or analysis:

- Project Description
- Consultation
- EIA Methodology
- Air Quality
- Surface Water and Groundwater
- Fish and Fish Habitat
- Vegetation and Wildlife
- Lighting
- Vessel Traffic
- Recreational and Commercial Fishing
- Human Health
- Cumulative effects
- Environment Management Plans
- Summary of Project Effects, Mitigation Measures and Residual Effects
- Conclusion

SNC-Lavalin will prepare a technical memorandum that will review and analyze the changes to each of the relevant sections in the EIA. The technical memorandum will discuss environmental effects and provide additional mitigation measures relevant to the proposed amendment which are not currently covered in the EIA, if applicable.

SNC-Lavalin will:

- Review the description of refinements associated with the proposed amendment to the project;
- Review the extent to which the EIA adequately describes the potential environmental impacts, taking into account refinements associated with the proposed amendment to the project;
- Describe and discuss the refinements associated with the proposed amendment to the project which are material to the EIA; and,
- Review and analyze the extent to which the potential impacts and mitigations should be updated, where applicable.

The original Environmental Impact Assessment (November 2013), and the scope and rationale documents (April 2015) provided by SNC-Lavalin in consideration of the proposed amendment can be found at www.fsd.bc.ca/amendment

3. Air Quality Assessment (AQA) – Levelton Consultants Ltd.

An Air Quality Assessment (AQA) was undertaken for the original project design. Port Metro Vancouver referred the AQA for review by an independent third party (Golder Associates Ltd.), prior to the approval of Permit No. 2012 – 072.

In consideration of the proposed amendment, Levelton will update the air quality study by conducting a review of the AQA submitted for the original permit (June 2014) to evaluate the potential impacts from the proposed project changes. A comprehensive list of emission sources will be evaluated related to the refinements associated with the project in the AQA, including the proposed coal operations at Fraser Surrey Docks LP (FSD) (i.e. emissions from marine vessels, and fugitive dust generated from material transfer points, as well as during coal unloading and loading), and in-transit emission sources (including emission from marine vessels on the Fraser River).

Levelton has reviewed the AQA and, based on their understanding of the proposed amendment, determined that the following areas of the report will require further analysis:

- Source Emissions Estimation
 - The key revisions will reflect the differences in the project components associated with the change from a barge loader to a ship loader, vessel emissions, and additional mitigation measures implemented for FSD's agricultural goods handling operation.
- Modelling Methodology
 - Revisions will reflect the differences in the project components associated with the change from a barge loader to a ship loader, and changes to FSD's agricultural goods handling operation.
- Air Dispersion Modelling Results
 - Key revisions will reflect the differences in the project components associated with the change from a barge loader to a ship loader, vessel emissions, and changes to FSD's agricultural goods handling operation, which will be used to assess the potential impacts from emissions.
- In-Transit Analysis
 - Revisions of combustion and fugitive dust emissions from transport on the Fraser River will be required to reflect the changes in the project components associated with the change from a barge loader to a ship loader, vessel emissions, and additional mitigation measures implemented for the agricultural goods handling operations. The analysis is to be re-conducted to determine potential impacts.
- Combustion Volatile Organic Carbons (VOC) Speciation
 - Revisions to this section will be required to reflect the changes to combustion emission sources. The analysis is to be updated for consideration in the HHRA (SNC-Lavalin).

To facilitate an update of the proposed amendment application, Levelton will revise the June 2014 AQA report, and summarize the revisions in a technical memorandum.

Levelton's scope of work in updating the AQA study will include the following:

- A review of the description of the refinements to the project associated with the proposed amendment;
- A review of the extent to which the AQA provides a representative assessment of the potential air quality impacts, considering the refinements to the project associated with the proposed amendment;
- A description and discussion of the refinements to the project associated with the proposed amendment which are material to the AQA; and,
- A review and analysis of the extent to which the potential impacts should be updated, including changes to the assessment methodology, where applicable.

The original Air Quality Assessment (June 2014), and the scope and rationale documents (April 2015) provided by Levelton Consultants in consideration of the proposed amendment can be found at www.fsd.bc.ca/amendment

4. Marine Risk Assessment – DNV (Det Norske Veritas)

A Marine Risk Assessment was undertaken for the original project design prior to the approval of Permit No. 2012 – 072 by Port Metro Vancouver.

In consideration of the proposed amendment, DNV will undertake a review of the Marine Risk Assessment to review the marine vessel movement and navigation risks associated with the proposed amendment of loading directly to OGVs as opposed to barges. The Marine Risk Assessment will review the navigational impacts associated with changing from barges to OGVs.

DNV has reviewed the Marine Risk Assessment and, based on their understanding of the proposed amendment, identified the following areas of the report that may require further analysis:

- Fraser Surrey Docks LP (FSD) Coal Barge Operations
 - This section will be redrafted to accurately describe the Panamax size vessels that are being considered for operations.
- Methodology and Approach
 - The methodology for calculating marine accident risk remains accurate with the exception of the case definitions. The cases described in this section are no longer accurate based on the refinements associated with the proposed amendment as they describe barge movements. The new cases that are proposed for analysis will be updated to include OGV movements.
- Risk Model Results
 - A new analysis will be conducted for the operations described in the proposed amendment. Because the environmental and traffic data for the Fraser River is still valid for the proposed amendment, the incident frequency results will be adjusted based on the number of OGV movements.

The traffic data (of vessels not associated with FSD) and the environmental data and assumptions from the original risk assessment will be utilized in the updated assessment. A complete re-model of the study area is not considered necessary due to the fact that the only parameter that would be altered is the number of vessels transiting the Fraser River.

The findings of the Marine Risk Assessment review, as outlined by DNV's scope below, will be summarized in a technical memorandum. In addition, mitigation measures will be revised to reflect the refinements associated with the proposed amendment to the project.

DNV's scope will include the following:

- Update the potential vessel accident frequency, consequence and risk from the previous projected activity of 640 barge movements to 80 OGV movements, and a range of scenarios in between;
- Linear adjustment of the accident frequency, based on the updated number of vessel movements; and,
- An update to the marine risk assessment based on the updated frequency of OGVs compared to barges.

The original Marine Risk Assessment (September 2014), and the scope and rationale documents (May 2015) provided by DNV in consideration of the proposed amendment can be found at www.fsd.bc.ca/amendment

5. Environmental Management Plan (EMP) – Soleil Environmental Consultants Ltd.

An Environmental Management Plan (EMP) was undertaken on the original project design prior to the approval of Permit No. 2012 – 072 by Port Metro Vancouver.

In consideration of the proposed amendment, Soleil Environmental Consultants Ltd. will undertake a review of the current EMP and, with Fraser Surrey Docks LP (FSD), update the plan where required. The EMP previously prepared for the original permit will be revised to reflect the proposed amendment to the permit to use OGVs.

As part of the review, Soleil Environmental Consultants Ltd. will consider if any of the proposed changes will impact the environment relative to the originally approved permit. For example, it is anticipated that a change to a taller ship loader with a covered telescoping chute will reduce the potential for fugitive coal dust. The proposed relocation of some infrastructure will require the production of new drawings for inclusion into the revised EMP.

Revisions to the current EMP will be completed and a new draft document produced for review, comment and approval by FSD with subsequent submission for review and approval to Port Metro Vancouver.

The original Environmental Management Plan (June 2013), and the scope and rationale documents provided by Soleil Environmental Consultants in consideration of the proposed amendment can be found at www.fsd.bc.ca/amendment

6. Water Management Plan – Omni Engineering Inc.

A Water Management Plan (WMP) was undertaken on the original project design prior to the approval of Permit No. 2012 – 072 by Port Metro Vancouver.

In consideration of the proposed amendment, Omni Engineering Inc. will undertake a review of the Water Management Plan (August 2014, WMP) to confirm the relevance of the water management impacts due to the proposed project changes.

The updated Water Management Plan will review:

- Updated wastewater containment area and associated water volumes;
- Re-location and re-sizing of the wastewater settling capacities accordingly;
- Minor modification to the out feed conveyor spill trays; and,
- Review of vessel loading dust mitigation technology strategies.

Results of the WMP review will be summarized in a revised WMP, covering the topics within the scope of work described above.

The original Water Management Plan (August 2014), and the scope document provided by Omni Engineering Inc. in consideration of the proposed amendment can be found at www.fsd.bc.ca/amendment

7. Fire Life Safety Plan – Hatch Mott MacDonald

A Fire and Safety Plan was undertaken on the original project design prior to the approval of Permit No. 2012 – 072 by Port Metro Vancouver.

In consideration of the proposed amendment, Hatch Mott MacDonald (HMM) will undertake a review of the Fire and Safety Plan (August 2014) to confirm the relevance of the fire and safety management impacts described to the proposed project changes. Further to this, HMM will conduct a full operational review to update the existing plan as a whole, bringing all aspects of the plan to relevance, and develop a Fire Life Safety Plan.

Review of the Fire and Safety Plan will:

- Undertake a complete revision of the existing Fire and Safety Plan for the proposed coal operations at FSD. The review will take into consideration:
 - Planned revisions to the proposed operation (barge loader to ship loader)
 - Revised operations of the loading vessels
- Summarize the requirements and regulatory frameworks for a coal handling facility;
- Describe the hazards and consequent risks; and,
- Detail the planned design mitigation and operational controls contained within the design.

Results of the Fire and Safety Plan review will be summarized in a revised Fire Life Safety Plan, covering the topics within our scope of work described above.

The original Fire and Safety Plan (RKMS, September 2012), and the scope document provided by Hatch Mott MacDonald in consideration of the proposed amendment can be found at www.fsd.bc.ca/amendment

8. Spill Response Plan – Fraser Surrey Docks LP

A Spill Response Plan for FSD's terminal and FSD's berth corridor was undertaken on the original project design prior to the approval of Permit No. 2012 – 072 by Port Metro Vancouver.

In consideration of the proposed amendment, Fraser Surrey Docks LP (FSD) will undertake an internal review of its existing Spill Response Plan to confirm the relevance of loading dry bulk ocean-going vessels (OGVs) described to the proposed project changes. The review will be led by Fraser Surrey Docks LP Director of Engineering and Terminal Development, with guidance from the Director of Operations and Health and Safety Officers. As FSD is a deep sea marine terminal with over 50 years of experience, no significant impacts or changes are anticipated to the existing Spill Response Plan, though this will be confirmed through a detailed review.

Results of the Spill Response Plan review will be summarized in an updated Spill Response Plan.

The original Spill Response Plan (January 2013), and the scope document prepared by FSD in consideration of the proposed amendment can be found at www.fsd.bc.ca/amendment

Frequently Asked Questions (FAQs)

1. *Why is Fraser Surrey Docks LP (FSD) building a Direct Transfer Coal Facility?*

- FSD is a major, multi-purpose marine terminal that facilitates shipping of a variety of goods including general cargo, steel, forest products, agricultural products and containers.
- FSD has the capacity to handle a portion of the 38 million metric tonnes of coal that are transported through Port Metro Vancouver annually, and has been permitted to do so following a thorough review process (completed August 2014).

2. *Why is FSD considering applying to amend its existing permit to build a Direct Transfer Coal Facility?*

- The proposed amendment would allow FSD to load coal directly from the facility to ocean-going vessels (OGVs), reducing the need for barges. OGVs have more capacity than barges. One loaded OGV can carry four train loads and the same amount as eight loaded barges.
- The proposed application to amend the existing permit would have no impact on the permitted volume of coal shipped through FSD (4 million metric tonnes per annum).
- Due to changes in commercial conditions, FSD anticipates shipping most or all of its volume by OGVs. The use of OGVs would reduce the number of marine vessel movements.

3. *What changes would the proposed amendment include?*

- The proposed amendment would increase the current size and height of the barge loader, allowing for direct loading to OGVs.
- Use of OGVs would replace most or all barges. If approved, FSD plans to replace all barges by OGVs, but would retain barging as a potential secondary option.

- It is anticipated that the use of OGVs would further mitigate the potential for fugitive dust, as coal would be transported in a closed hatch.

- The conveyance system, receiving pit and rail tracks would be shifted on site to accommodate the larger vessel loader.

- The footprint of the loading area would decrease, which may reduce water runoff.

4. *Will this change the volume of coal that FSD is permitted to transport through the facility?*

- The proposed amendment to the permit would not have any impact on the amount of coal that FSD is permitted to transport through the facility. The existing permit is for 4 million metric tonnes of coal (4 MMT) per year, and anything over this amount would require a new project review.

5. *How would the proposed amendment change vessel movements on the Fraser River?*

- The proposed amendment would allow FSD to load coal directly from the facility to OGVs, reducing the use of barges and reducing the number of vessel movements from the original project permit. An OGV can carry the volume of 4 trains. In comparison, 8 barges would be required to carry the same amount (1 ship = 8 barges).

- FSD anticipates shipping coal mostly or entirely by OGVs, while retaining barging as a secondary option.

6. *What type of vessels would be used with the proposed amendment?*

- Any vessel accommodated at FSD would be in accordance with current size limitations for the Fraser River. The ship loader being proposed would be able to accommodate Panamax class vessels that would not exceed 11.5 metre draft when loaded.

7. Why is it necessary for the height of the vessel loader to be increased?

- Vessels sit much higher in the water than barges and the loader must be able to reach over the side of the vessel into the hatch. This height will allow the vessel loader the appropriate reach to load coal directly into the specific vessel hatch it is loading.
- The vessel loader would require a maximum height of 36.2 metres to load coal directly into OGVs. By comparison, the gantry cranes used to move containers onsite at FSD are 55 metres high with the boom down, and are 82 metres high with the boom up.

8. How does this proposed amendment affect the studies that were completed for the original permit application?

- The following studies (available at www.fsd.bc.ca/amendment) will be reviewed and updated as necessary with a supplementary technical memo or report:
 - Human Health Risk Assessment (HHRA) – SNC-Lavalin Inc. (Environment & Water)
 - Environmental Impact Assessment (EIA) – SNC-Lavalin Inc. (Environment & Water)
 - Air Quality Assessment (AQA) – Levelton Consultants Ltd.
 - Marine Risk Assessment – DNV (Det Norske Veritas)
 - Environmental Management Plan (EMP) – Soleil Environmental Consultants Ltd.
 - Water Management Plan – Omni Engineering Inc.
 - Fire Life Safety Plan – Hatch Mott MacDonald
 - Spill Response Plan – prepared by Director of Engineering, Fraser Surrey Docks LP
- The public will have the opportunity to review and provide comments on the scope and results of the studies.
 - For further information on how to provide feedback, please visit www.fsd.bc.ca/amendment

9. What does this proposed permit amendment application mean with respect to the recent wastewater permit application to Metro Vancouver?

- The waste discharge permit application submitted to Metro Vancouver is for a maximum volume discharge rate of 5 litres per second of treated wastewater, and this would not change as a result of the amendment. Overall, FSD's treated wastewater would be 9,000 tonnes (0.0001%) of the 172 million tonnes of regional wastewater flowing through the Annacis Island facility every year, which includes a number of other industrial users, undergoing similar treatment.
- Wastewater from the proposed facility would first be treated onsite and discharged directly to the Annacis Island Treatment Facility via Metro Vancouver's North Surrey Interceptor Sewer, which runs directly under the FSD facility. As such, wastewater would be treated to meet or exceed Metro Vancouver's rigorous standards protecting water quality.

10. How many OGVs currently berth at FSD per year?

- Approximately 275 OGVs called at FSD in 2014.

11. What is being done to reduce coal dust from railcars?

- The coal will be sprayed with a binding agent at the mine site during loading to railcars. Once the railcars are loaded, a topping agent is applied to the coal in each railcar. In addition, Burlington Northern Santa Fe (BNSF) is constructing a re-spray station at Pasco, Washington to mitigate dust. This will provide additional dust mitigation for coal shipments en route to FSD.
- Although FSD is not responsible for the movement of products by rail, we are working closely with the mines and our rail partners to ensure dust mitigation strategies are consistently applied.

Reference Documents

The following supporting documents for the original project permit are available on the Project Updates page at www.fsd.bc.ca/amendment:

- Direct Transfer Coal Facility Project Application
- Human Health Risk Assessment (HHRA)
- Air Quality Assessment (AQA)
- Environmental Impact Assessment (EIA)
- Phase 1 Community Engagement Summary Report
- Phase 2 Engagement Summary Report
- Marine Risk Assessment
- Coal Transfer Facility Fire Safety Plan
- Preliminary Environmental Management Plan
- Air Dispersion Modelling Assessment
- Spill Response Plan
- Water Management Plan (WMP)

The following supporting documents for the original project permit are available at www.portmetrovanancouver.com/en/projects/OngoingProjects/Tenant-Led-Projects/FraserSurreyDocks.aspx:

Decision Documents, including:

- Project Review Report – August 2014
- Environmental Review Decision Statement – August 2014
- Human Health Risk Assessment Third Party Review (Golder Associates)
- Fraser Surrey Docks Direct Transfer Coal Facility Mitigation Strategy Description
- Backgrounder – About This Project and Decision Process
- Port Metro Vancouver Project Review Process
- Human Health Risk Assessment (HHRA) (July 2014)
- Environmental Impact Assessment Public Comments Response Memo
- Documents Referenced in the Environmental Review Decision Statement (including correspondence)
- Environmental Impact Assessment Public Comments Response Memo
- Fraser Surrey Docks Environmental Impact Assessment Public Agency Comments

Feedback Form

This feedback form seeks your input regarding the scope of the preliminary studies being undertaken by Fraser Surrey Docks LP (FSD) as part of its consideration to amend **Permit No. 2012 - 072**. The proposed amendment would be made to its existing permit that gives it conditional approval to build and operate a Direct Transfer Coal Facility within its existing lease area.

1. Human Health Risk Assessment (HHRA) completed by SNC-Lavalin Inc. (Environment & Water).

An overview of the proposed scope of this study can be found on page 7 in this discussion guide and the original study can be found at www.fsd.bc.ca/amendment

Please provide comments on the proposed scope of the Human Health Risk Assessment (HHRA) associated with Fraser Surrey Docks LP (FSD) proposed application to amend Permit No. 2012 – 072:

2. Environmental Impact Assessment (EIA) completed by SNC-Lavalin Inc. (Environment & Water).

An overview of the proposed scope of this study can be found on page 8 in this discussion guide and the original study can be found at www.fsd.bc.ca/amendment

Please provide comments on the proposed scope of the Environmental Impact Assessment (EIA) associated with Fraser Surrey Docks LP (FSD) proposed application to amend Permit No. 2012 – 072:

3. Air Quality Assessment (AQA) completed by Levelton Consultants Ltd.

An overview of the proposed scope of this study can be found on page 9 in this discussion guide and the original study can be found at www.fsd.bc.ca/amendment

Please provide comments on the proposed scope of the Air Quality Assessment (AQA) associated with Fraser Surrey Docks LP (FSD) proposed application to amend Permit No. 2012 – 072:

4. Marine Risk Assessment – DNV (Det Norske Veritas)

An overview of the proposed scope of this study can be found on page 10 in this discussion guide and the original study can be found at www.fsd.bc.ca/amendment

Please provide comments on the proposed scope of the Marine Risk Assessment associated with Fraser Surrey Docks LP (FSD) proposed application to amend Permit No. 2012 – 072:

5. Environmental Management Plan (EMP) completed by Soleil Environmental Consultants Ltd.

An overview of the proposed scope of this study can be found on page 11 in this discussion guide and the original study can be found at www.fsd.bc.ca/amendment

Please provide comments on the proposed scope of the Environmental Management Plan (EMP) associated with Fraser Surrey Docks LP (FSD) proposed application to amend Permit No. 2012 – 072:

6. Water Management Plan – Omni Engineering Inc.

An overview of the proposed scope of this study can be found on page 11 in this discussion guide and the original study can be found at www.fsd.bc.ca/amendment

Please provide comments on the proposed scope of the Water Management Plan (WMP) associated with Fraser Surrey Docks LP (FSD) proposed application to amend Permit No. 2012 – 072:

7. Fire Life Safety Plan - Hatch Mott MacDonald

An overview of the proposed scope of this study can be found on page 12 in this discussion guide and the original study can be found at www.fsd.bc.ca/amendment

Please provide comments on the proposed scope of the Fire Life Safety Plan associated with Fraser Surrey Docks LP (FSD) proposed application to amend Permit No. 2012 – 072:

8. Spill Response Plan – Fraser Surrey Docks LP

An overview of the proposed scope of this study can be found on page 12 in this discussion guide and the original study can be found at www.fsd.bc.ca/amendment

Please provide comments on the proposed scope of the Spill Response Plan associated with Fraser Surrey Docks LP (FSD) proposed application to amend Permit No. 2012 – 072:

Please submit your feedback form by May 19, 2015.

Fraser Surrey Docks LP (FSD) will consider your input, along with information provided by technical experts, as part of its consideration to apply for an amendment to Permit No. 2012 - 072.

Please provide your contact information (optional):

Name:

Organization (if applicable):

Role: (if applicable):

Address:

Postal Code:

Email:

Phone:

Any personal contact information you provide to Fraser Surrey Docks LP on this form is collected and protected in accordance with the Freedom of Information and Protection of Privacy Act. If you have any questions regarding the consideration to amend Permit No. 2012-072 Direct Transfer Coal Facility or Fraser Surrey Docks LP and/or the information collection undertaken on this form, please contact Fraser Surrey Docks LP at amendment@fsd.bc.ca.

The deadline to submit feedback is May 19, 2015

You can return completed feedback forms:

Online: www.fsd.bc.ca/amendment

By email: amendment@fsd.bc.ca

By mail: PO Box 2233 Vancouver Main,
Vancouver, BC V6B 3W2

For general project information:

www.fsd.bc.ca/amendment

Phone: 604-891-1695

Federal Court



Cour fédérale

701 W. Georgia Street
Vancouver, BC
V7Y 1B6

April 23, 2015

Via Facsimile

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Vancouver, BC
Fax (604) 632-4718

Dear Counsel:

**RE:T-1972-14, *Communities and Coal Society and others v
Vancouver Fraser Port Authority and Surrey Docks Limited Partnership***

Please find attached the Order of the Court (Case Management Judge Lafrenière) dated April 23, 2015 in this matter.

If you have questions or concerns regarding the above information please contact the undersigned by phone at (604) 666-3232 or by fax at (604) 666-8181.

Yours truly

A handwritten signature in cursive script that reads "Tamsin Ramsay".

Tamsin Ramsay
Registry Officer
Case Management



Date: 20150423

Docket: T-1972-14

Vancouver, British Columbia, April 23, 2015

PRESENT: Case Management Judge Roger R. Lafrenière

BETWEEN:

COMMUNITIES AND COAL SOCIETY,
VOTERS TAKING ACTION
ON CLIMATE CHANGE,
CHRISTINE DUJMOVICH
AND PAULA WILLIAMS

Applicants

and

VANCOUVER FRASER PORT AUTHORITY
AND FRASER SURREY DOCKS
LIMITED PARTNERSHIP

Respondents

ORDER

UPON MOTION in writing dated March 30, 2015, on behalf of the Applicants pursuant to Rule 369 of the *Federal Courts Rules* (Rules) for an Order:

- (a) Amending the Notice of Application in the form set out in the proposed amended notice of application and attached as Schedule A to this notice of motion, pursuant to Rules 3 and 75 of the Rules;

- (b) Requiring that the amended notice of application be served and filed within 5 days of an order being granted;
- (c) Permitting the Applicants to file additional affidavit evidence relating to the amendments within 14 days after the amended notice of application is served and filed;
- (d) Permitting the Respondents to file additional affidavit evidence responding to the amendments within 21 days after the amended notice of application is served and filed, or within 14 days after the applicants file additional affidavits, whichever time is longer;
- (e) Requiring the parties to complete their cross examinations within the same time frame as the other cross examinations take place in this judicial review application;
- (f) The Applicants seek their costs in this motion;

AND UPON reading the motion records filed on behalf of the Applicants and the Respondent, Vancouver Fraser Port Authority (Port Authority), and the Applicants' written representations in reply;

AND UPON noting correspondence dated April 9, 2015 from counsel for the Respondent, Fraser Surrey Docks Limited Partnership (Fraser Surrey), advising that his client will not be filing any submissions in response to the Applicants' motion;

Before me is a motion by the Applicants for leave to amend the Notice of Application to add to the grounds of their application for judicial review. The Applicants seek leave to allege that the Chief Executive Officer (CEO) of the Port Authority lacked the requisite authority to issue the Permit (as defined in the Notice of Application) to Fraser Surrey or to make a determination under s. 67(a) of the *Canadian Environmental Assessment Act*, 2012, SC 2012, c. 19, s. 52. (*CEAA 2012 Determination*), and to make consequential and other housekeeping amendments.

The Port Authority submits that the proposed amendments should not be allowed as it is plain and obvious that the allegations cannot succeed. It further submits that the amendments would not serve the interests of justice, particularly at this late stage of the proceeding.

The general principles on a motion to amend are well settled. I start from the proposition that a notice of application may be amended at any time. The governing principle is that, in the absence of prejudice to the opposing party, amendments should be allowed if they will assist in determining the real issues between the parties. The burden is on the moving party to adduce some evidence to convince the Court that it would be fair in the circumstances to allow the proposed amendments.

The Applicants have established that certain evidence was not available to them when they commenced the application. Information came to light on February 16 and 27, 2015, by way of e-mails received from the City of New Westminster, which raises questions about the CEO's authority to issue the Permit. On the record before me, I am unable to determine whether the CEO had the delegated authority to make either of the two impugned decisions. The Port's own documents that have been produced to date are less than clear about the identity of the decision makers and their authority to make the decisions.

The only issue before me is whether there are real questions in controversy warranting an amendment to the Notice of Application. In saying that the party proposing an amendment must pass the threshold requirement of showing that the amendment would serve the interests of justice, the court must not try the merits of the case. A proposed amendment ought not to be refused unless the Court is satisfied, not that it may not succeed, but rather that it cannot succeed. Thus, if there is doubt as to whether the proposed amendment raises an arguable issue, then the amendment should not be refused on that basis alone. I agree with the Applicants that it would be improper to decide the factual and legal issues raised by the proposed amendments on this motion. In my view, it is not beyond doubt that the proposed amendments will fail.

A proper amendment may nonetheless be refused if it may cause serious prejudice that is not compensable by an order of costs. Factors relevant to the assessment of whether an amendment would cause prejudice to the other party include the timeliness of the motion to amend, the extent to which the amendment would delay an expeditious hearing, the extent to which the original position caused another party to follow a course which is not easily altered, and whether the amendment facilitates the Court's consideration of the merits of the proceeding.

The first factor relating to timeliness of the application for leave is neutral in this case. There was no significant delay by the Applicants in bringing the present motion after receipt of copies of the e-mails which raised questions about the CEO's authority. In any event, delay, in and of itself, is not sufficient reason to deny relief.

Turning to the second factor, the Port Authority complains that the scope of the proceeding will be unnecessarily enlarged by allowing the amendments, further delaying an already delayed judicial review process. I disagree. The proposed amendments are well-framed and the factual and legal issues raised are not particularly complex. Although additional steps will have to be taken if leave to amend is granted, any delay exchanging additional affidavits and conducting cross-examinations would be minimal.

As for the last two factors, I am satisfied that the proposed amendments do not significantly alter the Applicants' position in this proceeding. The Applicants alleged in the Notice of Application that the Port Authority acted without jurisdiction in making the *CEAA 2012* Determination and in issuing the Permit. The Applicants now have information that the CEO was somehow involved and that the CEO may not have had the delegated authority to make the decisions. In my view, the proposed amendments are reasonable and would assist the application judge in determining whether the *CEAA 2012* Determination and the Permit decision were lawfully made.

THIS COURT ORDERS that:

1. The motion is granted.

2. The Applicants are granted leave to amend the Notice of Application in the form set out at Schedule A to the notice of motion.
3. The Amended Notice of Application shall be served and filed within 5 days of the date of this Order.
4. The Applicants shall serve additional affidavit evidence relating to the amendments and file proof of service within 14 days after the Amended Notice of Application is filed.
5. The Respondents shall serve additional affidavit evidence responding to the amendments and file proof of service within 21 days after service of the Applicants' additional affidavits.
6. Cross examinations shall be completed within the same time frame as the other cross-examinations take place in this proceeding.
7. Costs of this motion, hereby fixed in the amount of \$1000.00, shall be paid by the Respondent, Vancouver Fraser Port Authority, in the cause.

"Roger R. Lafrenière"

Case Management Judge