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OAKLAND

# AGENDA REPORT

2015 OCT -9 AM 10:48

**TO:** Sabrina B. Landreth  
City Administrator

**FROM:** Claudia Cappio  
Assistant City Administrator

**SUBJECT:** Informational status report on Coal's  
Public Health and/or Safety Impacts –  
No Action Required

**DATE:** October 9, 2015

City Administrator Approval

Date:

10/9/15

## RECOMMENDATION

Staff recommends that the City Council:  
Receive this informational report as a follow up to the September 21, 2015 hearing on coal's public health and safety impacts. No further action is requested at this time.

## SUMMARY OF STATUS, ACTIONS AND NEXT STEPS

At the City Council's September 21, 2015 meeting, Council requested an informational status report about how staff was working to follow up on the information, testimony and other evidence obtained from the public hearing process. The Council requested that the time period to submit additional public comments be extended, and this period ended on October 6, 2015. All comments, information, reports, and other testimony, received are now being reviewed, compiled and indexed. In addition, all material has been uploaded to the website ([link:http://www2.oaklandnet.com/Government/o/CityAdministration/d/NeighborhoodInvestment/OAK038485](http://www2.oaklandnet.com/Government/o/CityAdministration/d/NeighborhoodInvestment/OAK038485).) All of these materials are considered part of the administrative record.

Staff is in the midst of evaluating all evidence and will determine the type of expertise and other consultant assistance that will be required to follow up on the City Council's direction to develop and evaluate potential actions that the City could employ to address the health and/or safety impacts of the transloading, transportation, and handling and export of coal as part of the Army Base West Gateway development of the Break Bulk Terminal. This report provides a status and is for informational purposes only; no City Council action is contemplated and required at this time.

Item: \_\_\_\_\_  
City Council  
October 20, 2015

## **DISCUSSION**

As a follow up to the September 21, 2015 public hearing, an additional request was sent out to all interested parties about the extended time period to submit public comments, along with a list of questions that were identified as a result of public testimony and other information submitted (**Attachment A**). Staff is now reviewing and evaluating all information in order to complete an initial assessment of the type and extent of outside expertise that may be necessary to develop potential follow up actions for the City Council. We expect that this assessment will culminate in a Scope of Work, which will be distributed to contractors for proposals.

## **CONCLUSION**

It is expected that staff will return to the City Council with another informational status report, including a timeline to develop options, by the end of 2015.

This report is for status and information purposes only; no further action is required of the City Council at this time.

For questions regarding this report, please contact Doug Cole, Project Manager, at (510) 238-7661.

Respectfully submitted,



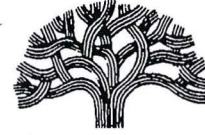
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Claudia Cappio  
Assistant City Administrator

Attachments: Attachment A

Attachment A

CITY OF OAKLAND



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OFFICE OF THE CITY ADMINISTRATOR  
Claudia Cappio  
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To: Interested Parties  
From: Claudia Cappio, Assistant City Administrator  
Re: Follow-up Questions on Coal's Public Health and/or Safety Impacts  
Date: September 28, 2015

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Thank you for the very informative oral and written evidence submitted to date as part of the City's September 21, 2015 Public Hearing on the public health and/or safety impacts and other impacts of the transportation, transloading, handling and/or export of coal products in/through the City of Oakland.

Although we are still reviewing the materials submitted before and during the hearing, we are requesting answers be provided to the following questions, some of which are technical and/or legal in nature. In the interest of time and efficiency, questions to specific entities are combined with more generally directed questions. If answers to some/all of these questions have already been addressed, please provide us the specific citation to such information. These questions in no way reflect any potential recommendations from City Staff and/or action by the City Council; rather, they are merely designed to provide as complete a record as possible.

Please provide responses **no later than Monday, October 5, 2015 at 4:00pm**. Please direct responses to **Douglas Cole, at dcole@oaklandnet.com**.

This letter, all responses received and the written materials submitted as part of the public hearing are (or will be) posted on the City's website at:

<http://www2.oaklandnet.com/Government/o/CityAdministration/d/NeighborhoodInvestment/OAK038485>

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- 1) How should "Project" and "Adjacent Neighbors" be defined pursuant to Development Agreement (DA) Section 3.4.2 ("existing or future occupants or users of the **Project**, **Adjacent Neighbors**, or any portion thereof, or all of them, in a condition substantially dangerous to their health or safety")?
  - Project – All private development subject to the Development Agreement which include the West, East and Central Gateway Development Area Leases, or just the West Gateway Development Area Lease portion which includes the location of the Break Bulk Terminal and rail right-of-way?
  - Adjacent Neighbors – The Army Base Redevelopment Plan Area, West Oakland Specific Plan Area, all of West Oakland, some other geographic area?
- 2) Based upon #1 above, what are the health and/or safety impacts of coal being transported from rail to ship at the Break Bulk Terminal on the existing or future occupants or users of the **Project**, **Adjacent Neighbors**, or any portion thereof, or all of them?
- 3) Would TLS through CCIG/OBOT contractually agree to:
  - a. Following the South Coast Air Quality Management District (SCAQMD) Rule 1158 restrictions?
  - b. Only handle bituminous coal?
  - c. Only use "covered" trains from the product source?
  - d. Abide by the proposed Basis of Design?
  - e. Incorporate all "protective measures" identified in TLS' July 15, 2015 letter?
- 4) If additional measures were agreed to contractually or if the City imposed additional regulations pursuant to the DA exception, could third parties, like railroads, challenge on preemption grounds?
- 5) Why/how would federal preemption apply if the rail was built on private (City) land and subject to pre-existing restrictions (imposed before allowing rail to be built)?
- 6) How much coal would actually go to Break Bulk Terminal, considering the EBMUD, CCIG and City MOU restricting train movements in the area and how much time would the coal train and/or coal actually spend in Oakland? How should the City calculate:
  - a. Maximum
  - b. Minimum
  - c. Reasonable Business Model Forecast?
- 7) If coal does not go through the Break Bulk Terminal, what are the reasonable assumptions for what will happen to that coal and why?
- 8) How much coal currently goes through the Port of Oakland on its way to the Richmond Port (or elsewhere)?

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- 9) Assuming coal continues to be shipped through the Port of Oakland on its way to the Richmond Port, would it (or would it not) be better to have the proposed "state-of-the-art" facility in Oakland, as compared to the existing facility in Richmond?
- 10) What is the BAAQMD or other data on the impacts of coal at the Richmond Port?
- 11) Has there been a detailed review/analysis performed of the CCIG/OBOT commissioned September 15, 2015 HDR Engineering Air Quality & Human Health & Safety Assessment Report? Does that report adequately analyze the potential health and/or safety impacts as framed in Items # 1 and 2 above? If not, why?
- 12) What specific Standard Conditions of Approval and/or Mitigation Measures contained in the SCAMMRP would address the potential health and/or safety impacts of coal as framed in Items # 1 and 2 above?
- 13) With respect to "Covered" Rail Cars:
  - a. Are "Covered" rail cars being used or tested in the U.S. or elsewhere?
  - b. Have tests been run on such technology?
  - c. Are there engineering specifications available for review?
  - d. How effective would these "Covered" cars be in reducing/eliminating fugitive coal dust emissions, both in absolute terms and as compared to other means (see Item #14 below)
- 14) If "Covered" Rail cars are not used, then what would be done to reduce/eliminate fugitive coal dust emissions:
  - a. Water – how much, where from, where does it go?
  - b. Spray – what kind of materials, how much?
  - c. Other measures?
  - d. How effective are these measures both in absolute terms and as compared "covered" cars?
- 15) With respect to water usage during operations:
  - a. When, how and where will water be used to control dust?
  - b. How much water is expected to be needed and what water source will be used?
  - c. Will water be recycled?
- 16) With respect to emergency response planning and actual operations?
  - a. What is the public safety/combustion risk of coal
  - b. Does the transport, containment present the potential for catastrophic explosion or fire danger?
  - c. Are coal operations monitored by OSHA
  - d. How can ILWU concerns be addressed or mitigated

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17) Would BAAQMD:

- a. Assist in evaluating TIS' proposed Basis of Design/cars?
- b. Evaluate existing mitigation measures and recommend any additional measures if needed?
- c. Provide data on the health and/or safety impacts of coal at the Richmond Port, and other Ports, such as Stockton and/or Long Beach?
- d. Provide data on the impacts of coal that is already transported through Oakland

18) With respect to CEQA:

- a. Does CEQA apply to rail operations, or is it preempted by federal law?
- b. If CEQA review is not preempted, why does/does not CEQA apply here (where approved Break Bulk Terminal did not include commodity restrictions)? What constitutes the "new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time" of preparation of the CEQA documents?
- c. If CEQA review applies, what is the extent/scope of such review and why?
- d. If the commodities change over time, does a new CEQA review need to be performed for each commodity?
- e. For each of the above, please provide specific citations (statutes, guidelines and/or statute) and analysis.