



BENEFICIAL USE OF SOLID WASTE RESPONSE TO PUBLIC COMMENTS

To: File **Date:** November 1, 2011
From: *TS* Tim Spencer, Project Manager
AOB Audrey O'Brien, Manager, Northwest Region Solid Waste
Subject: Beneficial Use Determination
Port of Portland, Terminal 6 dredge material placement at West Hayden Island

INTRODUCTION

The Oregon Department of Environmental Quality's Solid Waste program promotes the prevention, recovery and proper management of solid waste. DEQ's regulatory actions are not intended to influence land use decisions by local government.

In April 2010, the Environmental Quality Commission adopted rules establishing new procedures for DEQ to approve the beneficial use of solid waste. Beneficial use may involve using an industrial waste in a manufacturing process to make another product or using waste as a substitute for construction materials. Beneficial use of solid waste is a more sustainable alternative to disposal that conserves energy, reduces the need to extract natural resources and reduces demand for disposal facilities.

On August 3, 2011, DEQ received a Tier 2 beneficial use application from the Port of Portland to beneficially use sediments from a Port of Portland maintenance dredging project at Terminal 6, berths 601, 603, 604, 605 and 607 in the Columbia River. In order to maintain safe navigation, the Port proposes to dredge approximately 20,000 to 40,000 cubic yards of material from Terminal 6. DEQ proposes to approve the use of dredge material for upland fill at the West Hayden Island placement facility for future commercial development. In making its determination, DEQ reviewed analytical data for the sediments to ensure contaminant concentrations are below levels of concern for people and wildlife based on current and proposed future uses of the site.

PUBLIC INVOLVEMENT

On October 5, 2011 DEQ initiated a public comment period on the beneficial use determination and held an information meeting on October 24, 2011 at the Jantzen Beach Super Center Park Room. The meeting started at 6:30 pm and ended at approximately 8:30 pm. DEQ issued a public notice advertising the meeting and requesting comments. DEQ notified West Hayden Island residents by email and information posted on DEQ's website. The comment period closed at 5 p.m. on Friday, October 28, 2011. DEQ received nine comments during the public comment period. DEQ has summarized and responded to the comments received below.

RESPONSE TO COMMENTS

Comment #1:
To Whom It May Concern—



After just attending the public meeting tonight at the Jantzen Beach Super Center, I am dismayed by the continuous use of Hayden Island as a dumping ground for contaminated materials from other sites. It appears that the public process and our comments are irrelevant and the effect on the habitat on WHI is not recognized whatsoever. Several of the tests measure outside the guidelines, but somehow DEQ seems to think this is not important.

The only thing that seems to be the driving force is to build up the land out of the flood plain so it can be developed by the Port, although this has not yet been approved. The strategy is very transparent to me, but the DEQ, Port and City officials try to spin the information in hopes that the community will not see it.

It is time for someone in the DEQ to pull out the moral compass and re-evaluate the WHI situation to prevent an unrecoverable disaster from ruining this gem of land that has a higher and better use than just a dumping ground or development site.

Thank you,
Jimme' Peters

DEQ's response:

DEQ notes that the sediments were determined to be clean enough to be placed back into the Columbia River in the flow lane (the part of the river where the water flows fastest and is generally the deepest) by the federal and state agencies that review sediments through the dredging permitting process. The Port has requested that these sediments be allowed to be placed upland through a beneficial use application. In the evaluation of the Terminal 6 sediments, DEQ determined that the average concentrations of contaminants in the sediment to be placed at West Hayden Island do not exceed levels that are protective of people and wildlife.

DEQ opened a public comment period and held an information meeting to explain the application and DEQ's review. Within the purview of DEQ's rules, DEQ determined that the placement of these sediments will not harm people or wildlife. DEQ relies upon local government to address land use concerns and is aware that neighbors are concerned about future development and quality of life. If the land use process changes the Port's proposed use of the property to a different future use, DEQ will require the Port to evaluate the need for further mitigation such as covering the fill in place, removing the fill, or implementing other actions to protect the environment. Because the Terminal 6 sediments were determined clean enough for placement in the river, it is unlikely such measures would be necessary.

Comment #2:

ICTSI is writing you today in response to the request for our comments related to dredging along the Terminal 6 berths, 603, 604 & 605.

In short, dredging along Terminal 6 berths 603, 604 & 605 is critically important to maintain our existing business level and to attract future business. The industry is moving to larger vessels and in order to remain a competitive port and attract major ocean carriers we must be able to accommodate vessel in the 6500 TEU range. Our risk of not having the river at a reasonable competitive depth could cause a loss of container business to Terminal 6.

Further, ICTSI Oregon is committed to conducting terminal operations and managing resources at Terminal 6 in an environmentally sensitive and sound manner. We strive to prevent pollution from impacting the Columbia River through the use of Best Management practices, including good housekeeping practices, periodic pavement sweeping, storm system and catch-basin maintenance and use

of catch basin filters. Industrial areas and storm water discharges are inspected regularly, and spill response procedures and resources are in place in the event of any spill or contamination issue.

ICTSI is strongly in favor of the dredging efforts in the Columbia River and specifically along the Terminal 6 berths. We are of the opinion that dredging must continue on a regular basis and that without routine dredging our business would be increasingly adversely impacted.

Thank you for providing us with the opportunity to voice our concerns.

Regards,
Jim Mullen
Terminal Manager
ICTSI Oregon, Inc.

DEQ's Response:
Comment noted.

Comment #3:

DEQ Northwest Region must reconsider its interpretation of the "beneficial use requirement" as it applies to the Port of Portland's permit to place dredge deposits from Terminal Six to West Hayden Island. For several years, DEQ-NWR has accepted without question the City of Portland's alleged intention that the Port's placement of these spoils qualifies to meet your requirement, when in fact the Port's intended deposit site on West Hayden Island has not been explicitly so designated by the City. It is the only prudent thing to do for DEQ to investigate the alleged claim more thoroughly, requiring the City to provide proof of such explicit intention and determination; or, you may find this assumption to be completely without merit.

Here is the basis of this continuing dispute. In its public meeting on July 29th, 2010, the Portland City Council adopted a resolution to permanently set aside 500 acres on West Hayden Island for preservation of urban natural wildlife habitat. It also set in motion a process to study whether or not the remaining 300 acres on WHI is the site size "feasible" to accommodate a circular rail complex, auto park, break bulk storage yard, and deep-water port terminal, and to what extent, if any, it is likely to be economically sustainable.

However, nowhere in this resolution is there any mention of this area's being "beneficial" or "in use" by Portland's City Council. But, there are several caveats explicit in the resolution that in no way is this resolution to be interpreted to imply actual or tacit approval by the City of the Port of Portland's application to the City that WHI be annexed into the Portland City boundary and be rezoned from low-density and farm/forest to marine industrial. Yet, there is an obvious tendency by DEQ-NW to misinterpret in explicit intentions of the Portland City Council by allowing the Port, just a few days after this resolution, to deposit dredge spoils on WHI citing qualification of the "beneficial use" requirement.

The Port of Portland's permit application is in error when it implies it meets the "beneficial use" requirement, when it clearly does not. Please dig deeper into this application, if for no other reason than to find unquestionable evidence that once and for all puts to rest this continuing allegation of disqualification. I believe your thorough investigation will find no evidence the Portland City Council intends to interpret the Port's application to constitute "beneficial use," thus qualifying it for DEQ-NW approval.

Thank you for your consideration.

Sincerely,

Timme Helzer, Founder and Chair
Friends of West Hayden Island

Comment #4:

No need has been established at this point. There is no approved plan in place for this dump site. These permits are for a situation that does not exist. There is way too much speculation. The whole process should then determine the outcome. The true need of the Port of Portland has not been substantiated. That is based on speculation. Carolee Collen

DEQ's response to comment #3 and #4:

DEQ verified with the city that the current zoning supports placement of dredged sediments at the facility. DEQ is aware that the neighbors are working with the City on a comprehensive land use plan for West Hayden Island. As noted with DEQ's response to the Post Office Bar BUD comments, under the beneficial use rules, there must be an identified or reasonably likely use for the material that is not speculative. The Port of Portland has clearly identified the intended use is fill material at West Hayden Island. The use of dredged sediments for fill material is a common practice and is not considered a speculative use of sediments.

In making a determination that the proposed use is beneficial, DEQ relied on the history of dredged sediment placement at the site, the fact that current land use allows sediment placement, that use of dredged sediments as fill material is a common practice, that the Port of Portland requires fill material to develop the property for future marine commercial or industrial use, that the sediment contaminant concentrations are below screening levels for current uses by people and wildlife, and that the City is engaged in a planning process to evaluate area uses that include marine development.

Comment #5:

DEQ does not understand the beauty and wildlife of West Hayden Island. Zinc is being considered as a cause of stroke. My husband has had a stroke. The zinc in denture adhesive may have contributed to this. Leave the island alone. We love the deer, birds and other animals. Barbara Nelson.

DEQ's Response:

DEQ evaluated zinc concentrations in the samples provided by the Port and determined that the average concentration of zinc in the sediment is similar to naturally occurring concentrations of zinc in soil. DEQ has evaluated the sediment to be dredged and determined that placement of the sediment at the West Hayden Island facility will cause no harm to people or wildlife.

Comment #6:

As a community, we are totally against this proposal! There must be a better site than right where we live! We are already under siege with all the bridge plans (off ramps, etc). Our quality of life is at stake! As far as the Port goes, we do not want the Port developing the west end in any way! Let's think about land preservation! Pat Pavers-Taeger

DEQ's Response:

DEQ acknowledges that the Port may choose alternative locations for placement of sediment upland. DEQ is acting in response to the beneficial use application received from the owner of the property, the Port of Portland. DEQ has not identified adverse environmental impacts from placement of Terminal 6 sediments at the West Hayden Island Placement Facility. DEQ analyzed the risk to people and wildlife. The main concern is for people or animals that might be directly exposed to contaminants as a result of working, recreating, visiting or otherwise using the dredge placement area. The contaminant concentrations are below levels of concern indicating that the area is safe for such uses. There is no significant risk to residents or wildlife from placement of sediments at the placement facility.

DEQ is aware that the neighbors are working with the City and the Port on a comprehensive land use plan for the area. If the proposed future uses of the placement facility change, then DEQ will require that the Port evaluate whether additional actions, such as covering the fill or removal of the fill, are needed based on the final proposed use of the area.

Comment #7:

My concern is centered around toxic concentration build up from consecutive layers. During the Post Office Bar process, I asked DEQ about new peer reviewed studies from Europe addressing earthworms' ingestion of toxins and these toxins moving up the food chain. They were unaware of these studies. I am not one that believes in paving over soil as an acceptable form of mitigation. To clean this soil, a partnership with PSU and OSU to implement organic toxic remediation should be explored. Fungi and plants such as fava beans can accomplish detoxification. Jason Botel

DEQ's Response:

DEQ continuously reviews and periodically updates the screening values used to evaluate sediment and soil. DEQ's current **sediment** screening-level values consider bioaccumulation- the process of contaminants moving up the food chain and in some cases magnifying in higher trophic levels. Our current **soil** screening-level values do not include bioaccumulation values. However, organic contaminants (e.g., dioxin, polychlorinated biphenyls [PCBs], & pesticides) generally pose a greater bioaccumulation risk to receptors than inorganics (e.g., metals) because organic compounds preferentially partition to fat (and therefore bioaccumulate) more so than inorganics. Very few organic compounds were detected in Terminal 6 sediment, and metals were detected near or below naturally-occurring background levels.

DEQ does not consider the concentrations of dredged materials from the past few dredging projects to be of concern to require remediation to support the planned future commercial or industrial development of the property. If the proposed future use changes, DEQ will require that the Port evaluate whether additional actions such as covering the fill or removing the fill are needed to support the intended final use of the property. Covering contaminated media is an acceptable alternative for addressing contamination for certain uses.

Comment #8:

This letter is in support of DEQ's proposal to approve the beneficial use determination requested by the Port of Portland for placing dredged sediment at the West Hayden Island placement site. The process and placement can be performed safely and without unacceptable environmental impacts, based on a review of the analytical data, the specific conditions of the proposed approval, and the area on West Hayden Island that the placement is to occur. The Port and DEQ are to be congratulated for conducting such a rigorous process to prove beyond any reasonable doubt that the process can be accomplished in a satisfactory manner.

In addition to being performed in a safe and environmentally benign fashion, the dredging is essential to the operations of a working harbor. Family wage jobs and the Oregon economy are dependent on maintaining a healthy, working harbor. David J. Harvey, Gunderson, LLC.

DEQ's Response:

Comment noted.

Comment #9:

RH Mathers on behalf of Kinder Morgan submitted a letter dated October 25, 2011 to DEQ in support of prompt dredging of the main channel in the Post Office Bar area of the Willamette River and in full

support of DEQ's beneficial use determination for placing dredged sediment at the West Hayden Island Placement Facility in Portland, Oregon.

DEQ's Response:

DEQ notes the comments and also notes that the beneficial use determination for placement of Post Office Bar sediments at West Hayden Island was approved in May 2011. The Army Corps of Engineers just completed dredging of Post Office Bar and placement of sediments at the West Hayden Island facility. This proposed beneficial use is for placement of dredged sediment from Terminal 6 at the West Hayden Island facility.