



PORT METRO
vancouver

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Dear Dr. Daly and Prof. Van Buynder

Thank you for your letter of September 25, 2013 regarding the Fraser Surrey Docks ("FSD") Direct Coal Transfer Facility Project application. I would like to take this opportunity to respond to you directly in respect of this particular project review, and our ongoing relations more generally.

I would like to start from the proposition that we welcome input from the health authorities in our Project Review Process, and we particularly appreciate the comments set out in your December 17, 2012 letter regarding the potential for a more structured engagement going forward, which could of course vary depending upon the nature and complexity of projects. We are in general agreement with that idea and are giving consideration to options at this very time for moving those ideas forward. We expect to be in touch with you further in due course and we look forward to continuing that discussion.

With respect to this project specifically, I believe it is important that we clarify the context in which this application is being considered, and the responsibilities of Port Metro Vancouver as it relates to environmental protection. Some relevant points, which have not been noted in the prior exchanges of correspondence, include the following:

1. The project is not one that either the government of Canada or the government of British Columbia has deemed appropriate for a full environmental assessment under federal or provincial environmental assessment legislation. More specifically, the project does not trigger an assessment under the *BC Reviewable Projects Regulation* or the federal *Regulations Designating Physical Activities*. That is not to say that environmental and health issues will not be considered in our project review. It is only to say that both federal and provincial legislation make clear that this is not the type of project which requires a full scale environmental assessment.
2. While we have accepted your recommendation that a health impact assessment should be undertaken, we note that you appear to have continued concerns regarding the specific process being followed. In this regard, we note that there does not appear to be any single understanding of precisely what a health impact

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assessment entails (though there is some degree of consensus on certain general principles). Further, we do not agree with the suggestion that a health impact assessment should be administered by an entity independent of the proponent or the regulatory body considering an application. Indeed, impact assessment is most frequently done by proponents, their consultants and regulatory agencies considering applications. So while we welcome your input respecting this matter, we also believe that it is appropriate for Port Metro Vancouver to ultimately establish the specific process and requirements for this aspect of the permitting process, with due regard to input from relevant agencies.

3. In our previous discussions you have mentioned your powers under the Public Health Act, and suggested that if Port Metro Vancouver does not undertake its assessment to your satisfaction you may make orders under that Act. I must in turn advise that we do not believe that there is a significant potential for any project we may ultimately approve, with appropriate mitigation measures, to give rise to a "health hazard" as that term is used under the Public Health Act. Nor do there appear to be any relevant regulations under the Public Health Act governing these matters. But we of course will allow you to form your own judgments on such matters, and we mention this not out of a desire to engage in any jurisdictional disagreements, but rather simply to note that everything in society has at least some potential public health implications. But that does not necessary make them something subject to regulation under the Public Health Act. There are of course also broader questions about extent of applicability of provincial legislation to port lands, but we do not believe it is necessary to entertain that question at present.

All that is to say that we respect your statutory functions, as well as your agencies' broader public health interests, and we genuinely welcome your input into our Project Review Process. At the same time, it remains necessary for Port Metro Vancouver to administer its Project Review Process, under the *Canada Marine Act* and related legislation, in the manner it determines appropriate. This includes a requirement to ascertain whether a project is likely to have significant adverse environmental effects (including related health effects) having regard to mitigation measures. As we go about doing so for this project, please be assured we will be providing you with a copy of the Environmental Impact Assessment (which will include an assessment of its potential impacts on human health) and will welcome your comments, for a due consideration, at that point.

I wish to close by re-affirming Port Metro Vancouver's desire to have a constructive and mutually respectful relationship with your agencies and I look forward to further discussions about how we can best achieve those goals.

Yours truly,

PORT METRO VANCOUVER



James Crandles
Director, Planning and Development