

#1243 Wagstaff Battery Mfg. Co. COMM  
Multnomah Co.  
2013



# OFFICE OF MULTNOMAH COUNTY ATTORNEY

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March 12, 2013

Cheyenne Chapman, Policy Analyst  
Land Quality Division  
Oregon DEQ – Office of the Administrator  
811 SW 6<sup>th</sup> Avenue  
Portland, OR 97204

Re: PPA No. 98-05, ECSI #1243 - Port City Development Center  
Sublease Agreement, dated November 1, 2000, between Multnomah County (the "County") and  
The Port City Development Center ("Port City")  
2124 N. Williams, Portland, OR (the "Site")

Dear Ms. Chapman:

I am writing to follow up on Multnomah County's meeting on February 27, 2013, with Kevin Dana, DEQ Project Manager, and to confirm our discussions of a potential release of contaminated soils on the above-referenced Site. The factual background of the Site and recent events are discussed in my letter of February 22<sup>nd</sup> (copy enclosed) to Kevin Parrett. At our February 27<sup>th</sup> meeting, Mr. Dana advised the County that DEQ does not intend to reopen the project file on the Site in light of: (1) the remedial measures already undertaken by the County, (2) the results of tests performed by PBS Environmental establishing that the excavated soil was below the hazardous waste threshold and qualified for standard landfill disposal, and (3) the County's stated intent to backfill the trench with clean soils and replace the concrete cap, in compliance with the E&ES recorded May 24, 2005, and DEQ's Conditional NFA letter to Port City dated July 5, 2005.

Due to financial hardship, Port City notified the County in late 2012 of Port City's intent to cease operations on the Site after February 1, 2013, and to assign its vocational training center contracts to Albertina Kerr Centers ("Kerr"). Port City also announced its intent to convey title to the Site to the County, in full satisfaction of its obligation to repay the County for the revenue bonds issued by the County to finance Port City's acquisition, renovation and environmental remediation of the Site.

During the term of the Sublease Agreement, the County has not "participate[d] in the management of a facility" as that phrase is used and defined in ORS 465.200 et seq. and OAR 340-122-120 concerning the Site. The County is prepared to accept title to reimburse it for repayment of the bonds and therefore "primarily to protect a security interest" as that phrase is used and defined in ORS 465.200 et seq. and OAR 340-122-120. Following recordation of the deed from Port City, the County's current plan is to declare the Site as surplus property and attempt to sell the Site, subject to the environmental servitudes, to reimburse the County for the bond financing.

Cheyenne Chapman, Policy Analyst  
Land Quality Division  
Oregon DEQ – Office of the Administrator  
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I asked Mr. Dana whether DEQ would enter into a new Prospective Purchaser Agreement with the County or approve Port City's assignment of its purchaser's interest in the existing PPA to the County. Mr. Dana responded that a PPA is not warranted or required at this time, because the County's activities on the Site are "primarily to protect a security interest" and the County is not an "owner/operator" of the Site. I also asked Mr. Dana if, in the event the County is not able to sell the Site and decides, instead, to retain and redevelop the Site for another public purpose, would DEQ enter into a Prospective Purchaser Agreement with the County at that time, i.e., before the County takes on the status of "owner/operator of a facility" in place of its current status as a "holder acting primarily to protect a security interest."

Mr. Dana answered that, in his opinion, DEQ would respond favorably to such a future PPA request, if the County demonstrated its intent to undertake additional site remediation to permit redevelopment of the Site for a use in the public interest. I asked Mr. Dana if it would be helpful to write a letter to DEQ confirming the County's and DEQ's understanding of the County's current status and of what steps may be taken if that status changes in the future.

Mr. Dana responded that property owners frequently write such confirming letters, in the absence of any formal DEQ action, and recommended that I address the letter to you. Accordingly, please place this letter in DEQ's file for the above-referenced Site and advise me if you disagree with the County's understanding of its current status with respect to the Site and the prospect for a future PPA, assuming the conditions discussed above. Thank you.

Very truly yours,

JENNY M. MORF, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

  
Kenneth M. Elliott  
Assistant County Attorney

Cc by email: Thomas E. Roick, Sr. Policy Analyst, DEQ – [ROICK.tom@deq.state.or.us](mailto:ROICK.tom@deq.state.or.us)  
Kevin Dana, Project Manager, DEQ – [DANA.Kevin@deq.state.or.us](mailto:DANA.Kevin@deq.state.or.us)  
Kevin Parrett, Manager, NWR Cleanup Program, DEQ – [Parrett.Kevin@deq.state.or.us](mailto:Parrett.Kevin@deq.state.or.us)  
Dennis Terzian – Sr. Geologist – PBS Environmental – [dennis.terzian@pbsenv.com](mailto:dennis.terzian@pbsenv.com)  
Joanne Fuller – Chief Operating Officer, Multnomah County  
Mark Campbell – Chief Financial Officer, Multnomah County  
Marissa Madrigal – Chief of Staff, Chair Jeff Cogen  
Colleen Bowles – Deputy Director, FPM - Multnomah County  
Michael McBride – Compliance Section – Lead, FPM - Multnomah County  
Jenny Morf – Multnomah County Attorney



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FEB 27 2013

NORTHWEST REGION

February 22, 2013

Via Email [Parrett.Kevin@deq.state.or.us](mailto:Parrett.Kevin@deq.state.or.us) & 1st Class Mail

Kevin Parrett, PhD, Manager  
Northwest Region Voluntary Cleanup Program  
Oregon DEQ- Portland Office  
2020 SW 4<sup>th</sup> Avenue, Suite 400  
Portland, OR 97201

Re: PPA No. 98-05, ECSI #1243 - Port City Development Center  
Sublease Agreement, dated November 1, 2000, between Multnomah County (the "County") and  
The Port City Development Center ("Port City")  
2124 N. Williams, Portland, OR (the "Site")

Dear Mr. Parrett:

The purpose of this letter is to notify DEQ of a potential release of contaminated soils on the above-referenced Site. The County is the ground lessee of the Site from Port City and Sublessor to Port City under a lease financing agreement. On November 7, 2000, County issued \$2,000,000 in Tax Revenue Bonds to pay off Port City's acquisition of the Site and finance its construction, renovation, improvement and equipping of the facilities for use as a vocational training center. The Sublease required Port City to pay monthly rental to fund the County's repayment of the bonds.

Due to financial hardship, Port City defaulted on its rent and notified the County of its intent to cease operations on the Site after February 1, 2013, and to assign the vocational training center contracts to Albertina Kerr Centers ("Kerr"). Port City also announced its intent to convey title to the Site to the County, in full satisfaction of its obligation to repay the County for the bond financing. Kerr took possession of the Site on February 1<sup>st</sup> under a Sub-sublease from Port City in order to continue operation of the vocational training center.

Both Port City and Kerr have asked the County to consent to the Sub-sublease, as provided by the County's sublease to Port City. The County has prepared agreements consenting to the Sub-sublease, terminating both the ground lease and the Sublease, and accepting title from Port City in satisfaction of its debt. The agreements were tentatively scheduled to be considered by the Board of Commissioners on February 28<sup>th</sup>.

Last week, the County facilities staff inspected the Site and found an open trench cut through the concrete floor of the facility's kitchen and piles of excavated soil on the floor. Upon review of PPA No. 98-05, the floor plans and environmental reports done prior to the building renovation, the County is concerned that the excavation is

Kevin Parrett, PhD, Manager  
NWR Voluntary Cleanup Program  
Oregon DEQ – Portland Office  
February 22, 2013  
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at the location of Sump #1 at the north end of Building #1, one of the contaminated sites discussed in Section 2A of the PPA. The PPA required Port City to place a protective concrete cap over the sump, which Port City did, to prevent exposure of contaminated soils.

Both the PPA and a subsequent Easement & Equitable Servitude negotiated in 2005 require Port City to notify DEQ and obtain its approval prior to disturbing the soils beneath the capped concrete floor. The County does not know if Port City notified DEQ and obtained prior, written approval of the excavation plans or if the trench excavation was done with the required DEQ oversight. In any case, the work was abandoned without being completed.

During the term of the Sublease, the County has not “participate[d] in the management of a facility” as that phrase is used and defined in Oregon Revised Statutes (ORS) 465.200 et seq. and Oregon Administrative Rules (OAR) 340-122-120 concerning the Site. The County is prepared to accept title to reimburse it for repayment of the bonds and therefore “primarily to protect a security interest” as that phrase is used and defined in ORS 465.200 et seq. and OAR 340-122-120. If it moves forward to accept the deed from Port City, the County’s current plan is to declare the Site as surplus property and attempt to sell the Site, subject to the environmental servitudes, to reimburse the County for the bond financing.

Under these circumstances, would DEQ enter into a new Prospective Purchaser Agreement with the County or approve Port City’s assignment of its purchaser’s interest in the existing PPA to the County? I learned yesterday that Dennis Terzian of PBS Environmental discussed this situation by phone with Thomas Roick earlier this week. Michael McBride forwarded me a copy of your email to Dennis this morning, and I now understand you intend to assign Kevin Dana to handle this matter. We would welcome the chance to meet with him at his earliest opportunity to discuss this Site, what steps the County, with DEQ’s oversight, can take to remedy the current situation, and what options the County has to obtain repayment of its financing to Port City without becoming an “owner or operator of the facility.” Thank you.

Very truly yours,

JENNY M. MORF, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

  
Kenneth M. Elliott  
Assistant County Attorney

Cc by email: Thomas E. Roick, Sr. Policy Analyst, DEQ – [ROICK.tom@deq.state.or.us](mailto:ROICK.tom@deq.state.or.us)  
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