

AGENDA REPORT

Ordinance: Authorization to Enter into a Second Agreement to Extend Right of Entry and Indemnity Agreement with ExxonMobil Oil Corporation through June 30, 2023, for Remediation at Berths 23 and 24
(Maritime, Engineering)

MEETING DATE: 6/14/2018

AMOUNT: No Cost
Choose an item.

PARTIES INVOLVED: ExxonMobil Oil Corporation / Jennifer Sedlachek

SUBMITTED BY: Richard Sinkoff, Director of Environmental Programs & Planning
John C. Driscoll, Director of Maritime

APPROVED BY: J. Christopher Lytle, Executive Director

ACTION TYPE: Ordinance

EXECUTIVE SUMMARY

In June 2003, the Port of Oakland ("Port") and ExxonMobil Oil Corporation ("EMOC") entered into a Right-of-Entry and Indemnity Agreement ("Original ROE") covering EMOC's access to Berths 23 and 24 ("Site") in order for EMOC to conduct certain remedial activities until June 30, 2013. With approval of the Board of Port Commissioners ("Board"), the Port and EMOC entered into an Agreement to Extend Right-of-Entry and Indemnity Agreement ("1st Extension") extending the term of the Original ROE through June 30, 2018. EMOC has not completed all required remedial activities. This Agenda Report is a request that the Board give first reading to an Ordinance approving and authorizing execution of a Second Agreement to Extend Right-of-Entry and Indemnity Agreement ("2nd Extension") extending the term of the Original ROE, as amended, through June 30, 2023.

BACKGROUND

The Site was formerly occupied by two large bulk-fuel tank depots last operated by Mobil Oil Company (now “EMOC”), and Ashland Oil of California (“Ashland”) (see Exhibit A). Both of these operations commenced in the 1920s and ended in 1979 when the Port converted the areas from mixed industrial usage and ocean-going shipping to the present-day containerized cargo terminals.

Around December 1979, the Port discovered that there had been a release of petroleum from EMOC’s tanks into soil and groundwater, which the Port reported to the San Francisco Bay Regional Water Quality Control Board (“RWQCB”). Subsequently, the Port and EMOC conducted extensive environmental studies and activities, including subsurface investigations, preparation of human and environmental risk assessments, and construction and operation of large-scale remediation efforts.

In 1999, the RWQCB issued site clean-up requirements to the Port, as landowner, and EMOC, as the discharger, under Cleanup and Abatement Order No. 99-063 (“RWQCB Order”). EMOC has been conducting RWQCB-ordered remedial investigation tasks; constructing, installing, and operating a remediation system; excavating contaminated soils; and undertaking periodic groundwater monitoring and reporting. The Port has been reviewing, commenting on, and monitoring EMOC’s activities to ensure compliance with the RWQCB Order and other legal requirements.

ANALYSIS

The Port and EMOC are jointly subject to the RWQCB Order. If the Port does not comply, or fails to ensure that EMOC comply with directives from the RWQCB, then the Port may be subject (jointly and severally) to enforcement action by the RWQCB. In addition, the Port may also be subject to administrative civil liability under California Water Code Sections 13268 or 13350, which can carry fines between \$1,000 and \$15,000 for each day the violation occurs. Therefore, it is in the Port’s financial, environmental, and business interests to extend the term of the Right-of-Entry and Indemnity Agreement to allow completion of the remediation work.

Under the terms of the Original ROE, EMOC was granted access from June 17, 2003, through June 30, 2013, to certain areas at Berths 23 and 24, as identified in Exhibit B. The Board approved an extension of the Original ROE through June 30, 2018, which was memorialized in an Agreement to Extend Right-of-Entry and Indemnity Agreement (“1st Extension”). The Port and EMOC each desire to extend the term of the Original ROE, as amended, for five additional years, through June 30, 2023, in order for EMOC to continue testing, remedial activities, and related work as required by the RWQCB and other legal requirements. The area at Berths 23 and 24 to be covered by the 2nd Extension is unchanged from the Original ROE, as shown in Exhibit B.

BUDGET & STAFFING

The 2nd Extension will not result in any budgetary impact. The 2nd Extension will not increase Port full-time equivalent staffing.

MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)

The provisions of the Port Maritime and Aviation Project Labor Agreement (“MAPLA”) apply to EMOC’s contractor and sub-contractors for construction work performed under the Original ROE, the 1st Extension, and the 2nd Extension.

STRATEGIC PLAN

The action described herein would help the Port achieve the following goals and objectives in the Port’s Strategic Business Plan (2018-2022).

<https://www.portofoakland.com/wp-content/uploads/Port-of-Oakland-Strategic-Plan.pdf>

- Goal: Care for Our Environment

LIVING WAGE

Living wage requirements, in accordance with the Port’s Rules and Regulations for the Implementation and Enforcement of the Port of Oakland Living Wage Requirements (the “Living Wage Regulations”), do not apply because the requested action is not an agreement, contract, lease, or request to provide financial assistance within the meaning of the Living Wage Regulations.

SUSTAINABILITY

Port staff have reviewed the Port’s 2000 Sustainability Policy and did not complete the Sustainability Opportunities Assessment Form. There are no sustainability opportunities related to this proposed action because it does not involve a development project, purchasing of equipment, or operations that presents sustainability opportunities.

ENVIRONMENTAL

The proposed additional five-year extension to the term of the Original ROE, as amended, with EMOC is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to the Port CEQA Guidelines, Section 15301(p), which exempts renewals, extensions or amendments to leases or license and concession agreements where the premises or licensed activity was previously leases or licensed to the same or another person, and involving negligible or no expansion of use beyond that previously existing. Approving the

ROE Extension with EMOC to continue its current remediation activities meets the criteria for this exemption.

Furthermore, EMOC's clean-up activities on the Site were previously reviewed under CEQA. On June 17, 2003, the Board adopted an "Initial Study/Mitigated Negative Declaration ("IS/MND") for Soil and Groundwater Investigation and Vapor Extraction and Air Sparging Pilot Testing/Interim Remediation at Berths 23 and 24" (Resolution No. 03167). If EMOC proposes additional clean-up activities on the Site in the future, Port staff will determine whether further environmental review is required, and will bring the specific project to the Board for additional findings under CEQA, if necessary.

GENERAL PLAN

This action is limited to the extension of an existing right of entry and does not change the use of any existing facility, or create a new facility; therefore, a General Plan conformity determination pursuant to Section 727 of the City of Oakland Charter is not required. Activities approved under the ROE Extension were evaluated and approved under the original action.

OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)

The Port's Owner Controlled Insurance Program does not apply to the ROE Extension as it is not a Port capital improvement construction project.

OPTIONS

- The Board may choose to approve the 2nd Extension, which will extend the term of the Original ROE, as amended, for five years through June 30, 2023. This is the option recommended by staff since it will provide sufficient time for EMOC to complete the remediation work according to the current schedule.
- The Board may choose not to extend the term of the Original ROE, as amended. In that case, the Port may need to take over all responsibility for remediating the Site's soil and groundwater, at an added cost to the Port.
- The Board may choose to extend the term of the Original ROE, as amended, but for fewer than five years. This course of action would require EMOC either to complete the remediation of soil and groundwater at the Site in a shorter time than EMOC and the Port now consider feasible, or to request an additional extension of the Original ROE, as amended, from the Board sometime in the next five years.

RECOMMENDATION

It is recommended that the Board give first reading to an Ordinance approving and authorizing the Executive Director to execute the 2nd Extension, which will extend the term of the Original ROE, as amended, with EMOC for remediation at Berths 23 and 24 through June 30, 2023.