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PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA

Item No. 6b

ACTION ITEM

Date of Meeting April 24, 2012

DATE: April **23**, 2012

TO: Tay Yoshitani, Chief Executive Officer

FROM: Stephanie Jones Stebbins, Director, Seaport Environmental and Planning
Michael McLaughlin, Director, Cruise and Maritime Operations

SUBJECT: Proposed Amendments to Memorandum of Understanding (MOU) Cruise Operations in Washington State

ACTION REQUESTED:

Commission directs the Chief Executive Officer to set aside the proposed amendments to the MOU, and substitute the following approach in discussions with the MOU Signatories:

- 1) Codify the existing practice of Cruise Vessels not discharging while at berth through a change to the Port's tariff and
- 2) Support the Washington State Department of Ecology's (Ecology) work to understand the optimal geographical and operational extent of a Puget Sound proposed No Discharge Zone (NDZ). Play a leadership role in understanding the potential operational impact to the Port's Cargo and Cruise industry.

SYNOPSIS:

Two proposed amendments to the Cruise MOU, as established in 2004, are being considered pursuant to the MOU amendment review process which requires that the MOU signatories meet at the end of the review process to determine whether to adopt any of the proposed amendments. The amendments are as follows:

- 1) Ban the discharge of gray water and black water in MOU waters.
- 2) Ban the continuous discharge of gray water and sewage (black water), limiting to only discharge while the ship is greater than 1 mile offshore and traveling at least six knots or greater

Staff has evaluated these amendments and determined that, while we support the end result these amendments seek to achieve, the MOU is not the most effective way to achieve these results. Instead, staff is recommending a different approach that has the potential to broaden participation beyond the MOU parties.

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BACKGROUND:

We are pleased to note that many of the concerns raised by the amendment proponents in the original letter are already addressed by the current MOU. The proposal letter (attached) and supporting data (referenced EPA study) refer to many practices already prohibited by the MOU, such as discharges by traditional Type 2 Marine Sanitation Devices (MSD) and untreated discharges of gray water and black water. None of these discharges are permitted by the MOU. For instance, the letter states: “Effluent discharges from MSDs often also exceed secondary treatment standards for land-based domestic sewage.” We would agree, which is why the MOU already bans these discharges and has since its inception in 2004

As we understand it, the intent of these amendments would also be to ban discharges of treated effluent from advanced wastewater treatment systems, which is currently allowed by the MOU, with certain conditions. The vessel must seek approval from Ecology. With appropriate approval granted from Ecology, the MOU allows two types of wastewater discharge to occur either “continuously,” meaning while the vessel is secured at berth and within one mile of berth, or when the vessel is underway more than one mile from its berth, moving at a speed of at least 6 knots.

It should be noted that there has been a steady decline in the amount of treated cruise ship wastewater discharged in Washington waters – even as the number of cruise calls has increased. Ecology records show that in 2006 eleven homeported vessels received approval for discharge while in 2010 and 2011 cruise seasons only two homeported vessels received approval for discharge while underway. In 2006, 4 vessels received approval to discharge “continuously,” meaning while at berth, while in 2010 and 2011; all vessels have voluntarily abstained from this practice.

The Port of Seattle would like to see this practice of no discharge at berth codified. We will do so unilaterally within our existing authority by placing this restriction in the Port’s tariff. The tariff will include the following:

- Passenger cruise ships will not discharge graywater or blackwater, whether treated or not while at berth in Seattle

This language will be added to the tariff and will go into effect on May 1, 2012. The Port does not have the authority to restrict discharge when the vessel is not at berth; however, staff considers it unlikely that discharge will take place within a mile from berth, as the MOU only allows this if applying for continuous or “at berth” discharge. No vessel has chosen to do so for several years, and staff considers it unlikely that they would do so, if discharge at berth (the main “benefit” of such an approval) is not permitted in any case. Again, if any vessel seeks to discharge while not at berth but within one mile of it, that vessel must first seek review and receive approval from the Department of Ecology.

The other proposed amendment (number two), concerns the discharge of treated effluent while underway. The effluent being discussed in this case is highly treated and of a comparatively

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small volume when compared to effluent of similar quality discharged from land-based treatment systems, such as King County's West Point Wastewater Treatment Plant.

In 2007 King County Department of Natural Resources and Parks performed a comparison between West Point and cruise ship Advanced Wastewater Treatment System (AWTs) discharges as part of their *Cruise Ship Wastewater Management Report*. AWTs samples were taken to the West Point laboratory with the following results in key discharge quality criteria:

	Ship 1	Ship 2	West Point
Total Suspended Solids (mg/l)	0	11	13
Total Solids (% solids)	0.035	0.05	0.05
cBOD (mg/l)	>16	23	11
Fecal Coliforms	0	0	0

The executive summary of the report states: "Based on a review of effluent sampling results prepared by the State Department of Ecology, and on a comparative analysis of effluent samples from some cruise ships with effluent produced at the West Point Treatment Plant, the cruise ships sampled are producing and discharging effluent that is at least as clean as effluent from West Point."

One issue that has received a fair amount of attention is ammonia concentrations. The sample testing results found in the most recent federal discharge permit application for the West Point Wastewater Treatment Plant reflect an average ammonia concentration of 18.4 mg per liter. In comparison, 2011 MOU sampling showed generated ammonia concentrations ranging from 9.1 to 31 mg per liter and averaging 20 mg per liter. It should be pointed out that West Point and cruise vessels have similar Ammonia Concentrations, newer land based treatment plants such as Brightwater, will likely have much lower Ammonia concentrations.

While the discharges are similar in various concentration levels there are a number of differences in the effluent. The West Point outfall is on the bottom of the Sound, approximately 230 feet below the surface and 3600 feet from shore. In contrast, cruise ships discharge below the vessel waterline, and if discharging underway, there is mixing that results from the vessel movement.

Although the current evidence does not suggest that there is significant impact from the discharges that are currently occurring, being similar in nature to land based treatment plants, but much smaller in volume, we support the current work underway by the State, to evaluate NDZs in Puget Sound more comprehensively in accordance with the Puget Sound Partnership Action Agenda. Ecology is leading a study to evaluate the establishment of one or more NDZs in Puget Sound. Several other State Agencies are also contributing to the study including the State Department of Health, Department of Natural Resources, Puget Sound Partnership, Department of Fish and Wildlife, and State Parks The work has been funded by a grant from the National Estuary Program. The Clean Water Act dictates that states cannot enact NDZ's on their own but must petition the EPA. The work being done now will lead to a petition process. The first phase of this study will be completed in July 2012 and includes gathering information about existing

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infrastructure to support an NDZ (such as pump out facilities) and other research tasks. Phase 2 will follow (hopefully beginning in September 2012) and will include evaluation at the geography where a NDZ will benefit water quality and pathogen protection. Both a sound wide NDZ and more targeted NDZs are being evaluated. Phase 2 is scheduled to be completed in July 2013 and will lead to a decision on whether and for what areas to petition EPA.

An NDZ has recently been established for the 3 nautical miles off the entire California coast. The rule covers treated sewage discharge from cruise ships and oceangoing vessels of 300 gross tons or greater. Untreated sewage was prohibited from release within 3 nautical miles of land through federal and international law. In addition, staff has researched the existence of NDZ's at the top six U.S. cruise ports – New York, Fort Lauderdale, Miami, Seattle, Port Canaveral (Orlando), and Los Angeles. In addition to the California NDZ, covering Los Angeles, NDZ's are being considered in Puget Sound and in New York harbor. The remaining three ports do not have NDZ's and are not considering them.

The MOU between the Port, Ecology and the North West and Canada Cruise Association (NWCCA) has provided many benefits over the years. It continues to provide not only stringent standards, but also data made available to the public and Ecology oversight. We have found that this is one tool to continue to work towards lower environmental impacts collectively with the Cruise Industry. Staff feels that it is both important to maintain this MOU, but also to use other appropriate tools where they will better achieve our purpose. If we are going to continue encouraging environmental performance far beyond any regulatory requirements, we must do so in ways that are workable for our business partners. It is our understanding that the NWCCA will not support either proposed amendment; however, their concerns primarily relate to using the MOU to achieve these goals. For that reason, we recommend pursuing these ends by other means.

ADDITIONAL BACKGROUND:

The MOU is a voluntary agreement between three signatories: the Port of Seattle, Ecology and the NWCCA. Interest in establishing the MOU started during the rapid growth of the cruise ship business in Washington in the last decade. Several bodies of law already govern waste management aspects of cruise ship operation. Nevertheless, the parties decided to create the MOU that goes beyond other existing environmental regulatory requirements. The original MOU was signed in 2004. Since the original MOU signing in 2004, the agreement has been amended five times to reflect advances in wastewater treatment technology and higher standards for environmental stewardship.

Each year, Ecology completes a compliance report. The report for 2011 is attached to this memo. As mentioned above, of the 14 vessels calling and homeporting in Seattle, 12 did not seek approval to discharge in Puget Sound. Two received approval to discharge while underway. The Ecology report also includes a summary of the five inspections completed as well as sampling results. The two issues raised this year include one instance of sending expired and unused medications to the blackwater system, in violation of both the MOU and Cruise Lines

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International Association (CLIA). Fortunately this vessel did not discharge any blackwater in MOU waters and procedures have been changed to prevent a recurrence. In addition, one ship accidentally discharged untreated grey water, in violation of the MOU and state laws. According to the Ecology report, the vessel “took all measures to stop discharges immediately, immediate review of procedures, investigation. Ecology inspection and follow up.”

In addition to this yearly report, recently the MOU parties established policies to define a process for the consideration of proposed MOU amendments offered by non-parties. The policies dictate that such amendments can only be considered and adopted once every three years starting in 2012.

The policies further establish a three-phase process for each individual review cycle. The phases are:

- a 21-day solicitation of amendment proposals,
- a 45-day evaluation of proposals against established criteria, and
- a 30-day public comment period for those amendment proposals found by at least one MOU party to meet the established criteria.

The respective staff of each MOU signatory have been working together to follow the prescribed process. Proposed amendments were submitted jointly by Friends of the Earth, Puget Soundkeeper Alliance, and People for Puget Sound. At the time of the Commission presentation, the process will have completed the third phase of review, the public comment period.

The original proposal included three amendments; however, the third proposed amendment was determined by the MOU parties not to meet the criteria for moving forward. The public comment period for the remaining two amendments listed above lasted from January 12 to February 13, 2012. Staff took various actions to notify the public of the public comment period, including notices on the Port and Ecology websites.

The amendment process prescribes that the next step is for each party to adopt a position on each of the amendments that advanced to public comment in the third phase of review. As a result, staff is providing recommendations for commission action in order for the Port to determine its position with a formal vote of the Commission. In order to be adopted into the MOU, all three parties must unanimously support the amendment.

Approximately 1,874 public comments have been received by the Port and Ecology although Ecology is the agency officially tabulating the comments. 978 comments were entered into the record at the January 10, 2012, Commission meeting at the request of Friends of the Earth. The comments were provided as a Compact Disc of PDF copies of the letters (Form Letter One). 350 comments were received in another PDF forwarded by Friends of the Earth during the comment period. 544 emails were received directly by the Port and Ecology during the comment period. Most of the emails submitted during comment period were identical or similar to Form Letter

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Two. In addition, a comment letter was received from Friends of the Earth and Puget Sound Keeper Alliance. A separate comment letter was received from People for Puget Sound. Following the close of the public comment period, letters were received from Puget Sound Partnership and the Washington State Department of Health. The texts of all of these letters are attached.

OTHER DOCUMENTS ASSOCIATED WITH THIS BRIEFING:

- Attachment 1: MOU
- Attachment 2: Amendment Process for MOU
- Attachment 3: Friends of the Earth, People for Puget Sound and Puget Soundkeeper Alliance letter dated November 21, 2012 with proposed amendments
- Attachment 4: Friends of the Earth and Puget Sound Keeper Alliance letter dated February 13, 2012
- Attachment 5: People for Puget Sound letter dated February 13, 2012
- Attachment 6: Ecology letter dated March 2, 2012
- Attachment 7: Puget Sound Partnership letter dated March 13, 2012
- Attachment 8: Dept. of Health letter dated March 26, 2012
- Attachment 9: Form Letter One
- Attachment 10: Form Letter Two
- Attachment 11: Ecology PowerPoint – 2011 Compliance
- **Attachment 12: North West and Canada Cruise Association letter dated April 20, 2012**

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS:

- On April 13, 2004, the Commission authorized the execution of an MOU governing environmental management practices of cruise ships using Port facilities.
- On June 27, 2006, the Commission was briefed on Cruise Operations water quality MOU
- On October 27, 2009, staff briefing on Cruise MOU, Commission received public comment regarding briefing on Cruise MOU.
- On April 6, 2010, the Commission was briefed on three proposed amendments to the MOU and the need for an agreed procedure for the amendment process.
- On November, 2, 2010, the Commission was briefed on the Cruise MOU, proposed options for an MOU amendment process
- On February 14, 2012, the Commission was briefed on staff's actions to follow the MOU amendment process for this same amendment proposal by Friends of the Earth, Puget Soundkeeper Alliance, and People for Puget Sound. The comments received during the public comment period were not summarized at that time since the period had closed only one day earlier.