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## VIA FEDERAL EXPRESS

Ms. Anne F. Soiza  
Pipeline Safety Director  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Dr. S.W.  
P.O. Box 47250  
Olympia, WA 98504-7250

2009 JUL -8 AM 9:11

**Re: 2009 Hazardous Liquid Standard Inspection  
SeaTac International Airport Fuel Terminal Operated by Swissport Fueling,  
Inc. – Ref. No. Docket PL-090042**

Dear Ms. Soiza:

As you are aware, this firm represents SEATAC Fuel Facilities LLC (“SEATAC LLC”), in connection with the above-referenced inspection and docket. As discussed more fully below, SEATAC LLC leases from the Port of Seattle (“the Port”) the SeaTac International Airport Fuel Terminal (“Airport Fuel Terminal”). Since 2002, SEATAC LLC has contracted with Swissport Fueling, Inc. (“Swissport”) to operate, maintain and manage the Airport Fuel Terminal.

On April 7 to April 9, 2009, pipeline safety staff of the Washington Utilities and Transportation Commission (“WUTC Staff”) conducted a hazardous liquid inspection of the Airport Fuel Terminal operated by Swissport. It is our understanding that the inspection included a review of Swissport’s Operations and Maintenance procedures manual, drug and alcohol-misuse testing programs, documentation of the Airport Fuel Terminal pipeline facilities and a walk-through inspection of the Airport Fuel Terminal pipeline facilities.

Subsequent to the inspection, WUTC Staff sent a letter dated May 6, 2009 to Mr. Frank J. Grolimund of Swissport (“May 6 Inspection Letter” – a copy of which is attached as Exhibit A). Mr. Grolimund is Vice President of Operations for Swissport and is based

out of Dulles, Virginia. In the May 6 Inspection Letter, WUTC Staff identified twelve (12) probable violations of Title 49, CFR Parts 195 and 199, and Washington Administrative Code (“WAC”) 480-75 regarding Swissport’s operation of the Airport Fuel Terminal. On May 29, 2009, WUTC Staff granted a thirty-day extension to respond to the May 6 Inspection Letter. Swissport’s response is due to WUTC Staff by July 8, 2009.

As the Port’s lessee of the Airport Fuel Terminal operated by Swissport, SEATAC LLC submits this letter in response to the May 6 Inspection Letter. In submitting this letter to WUTC Staff, SEATAC LLC and Swissport specifically reserve their rights to a hearing before the WUTC on any issue arising from the May 6 Inspection Letter. We hope that this letter will serve as a framework for more detailed discussions among WUTC Staff, Swissport, SEATAC LLC, and among other integral parties such as the Port and the Olympic Pipe Line Company, an operation of BP Pipelines (North America) Inc. (“Olympic”). SEATAC LLC remains committed to working cooperatively with WUTC Staff to resolve any outstanding issues related to the May 6 Inspection Letter.

Provided below is a brief factual overview of the Airport Fuel Terminal. This factual overview underscores the complex nature of Swissport’s operations, including the interdependent relationships and interests among the Port, Olympic, Swissport and SEATAC LLC. We believe these facts are critical in order for WUTC Staff to properly evaluate the steps taken by SEATAC LLC to facilitate and coordinate Swissport’s efforts to come into compliance with the applicable safety requirements identified in the May 6 Inspection Letter.

#### **I. Relevant Background Information regarding the Airport Fuel Terminal.**

From approximately 1970 until 2002, Olympic owned and operated the Airport Fuel Terminal. A portion of Olympic’s underground pipeline system is called the SeaTac Lateral and it is used to make deliveries of aviation jet fuel to the Airport Fuel Terminal. It is our understanding that Olympic’s SeaTac Lateral is the only means of supplying jet fuel by pipeline to SeaTac International Airport.

In March 2002, the Port purchased from Olympic the Airport Fuel Terminal. The Port subsequently entered into a lease with SEATAC LLC for the Airport Fuel Terminal, in which the Port granted SEATAC LLC the exclusive right to deliver jet fuel at SeaTac International Airport. SEATAC LLC is a Delaware Limited Liability Company formed by a consortium of airlines for the purpose of providing jet fuel storage and distribution at SeaTac International Airport.

Under the terms of the lease with the Port, SEATAC LLC is required to hire an independent licensed fuel system operator to operate the Airport Fuel Terminal. Subject to the Port’s approval, in April 2002, SEATAC LLC contracted with Swissport to maintain, operate and manage the Airport Fuel Terminal. Swissport has operated the Airport Fuel Terminal from April 2002 to the present.

When the Port purchased the Airport Fuel Terminal from Olympic in approximately March 2002, Olympic retained the right to connect its SeaTac Lateral to the Airport Fuel Terminal. Olympic's rights pursuant to the SeaTac Lateral connection allowed Olympic to use the Airport Fuel Terminal as a relief system for the SeaTac Lateral. Under the terms of the agreement with the Port, Olympic, at its sole cost and expense is required to maintain and regularly test a relief system for the SeaTac Lateral. Any improvements made to the relief system are Olympic's sole responsibility; however, the Port directed construction for an upgrade of the Airport Fuel Terminal in 2005 in connection with installation of a fuel hydrant system at the Airport.

Currently, Olympic's SeaTac Lateral utilizes Tank 115 inside the Airport Fuel Terminal to relieve potential pipeline surges. Under 49 CFR § 195.2 and WAC 480-75-100, tank 115 has been classified by WUTC Staff as a "Breakout Tank."

Olympic's utilization of the Airport Fuel Terminal as a relief system for the SeaTac Lateral, coupled with the Port's ownership of the Airport Fuel Terminal, requires Swissport to closely coordinate pipeline safety compliance efforts with Olympic, the Port and SEATAC LLC. As discussed below, this unique situation created some degree of confusion and uncertainty with respect to questions of WUTC jurisdiction over the Airport Fuel Terminal and related relief system used by Olympic for purposes of relieving a potential surge from Olympic's SeaTac Lateral.

## **II. Uncertainty regarding WUTC Jurisdiction over the Airport Fuel Terminal.**

Certain public records we have reviewed indicate that despite good faith efforts by all parties involved, including WUTC Staff, precise answers regarding the scope and nature of WUTC jurisdiction over the Airport Fuel Terminal remained elusive until only recently.

In 2007 for example, WUTC Staff inspected all of Olympic's Laterals, including the SeaTac Lateral that connects to the relief system located within the Airport Fuel Terminal. These WUTC Inspection Reports provided in relevant part:

All Olympic Pipeline Laterals were inspected. These include ... [t]he SeaTac lateral [which] is 12-inches and 5.54 miles long. All breakout tanks on [the] laterals were inspected. There were no violations or concerns concerning the breakout tank portion of the inspection. All tanks are equipped with independent hi-hi alarms that tested annually. All tanks are getting adequate Cathodic Protection based on the reading taken.

WUTC Breakout Tank Inspection Form and Records Review and Field Inspection for Olympic Pipeline, both submitted May 4, 2007 (emphasis added).

It is unclear from the face of these WUTC Inspection Reports whether the inspection included any tanks or relief system located in the Airport Fuel Terminal.

In the Fall of 2007, it is our understanding that WUTC Staff visited the Airport Fuel Terminal for purposes of determining whether any portion of the Airport Fuel Terminal was subject to WUTC jurisdiction. Correspondence between the Port and WUTC Staff indicate that WUTC Staff concluded that Breakout Tank 115 and certain related components were subject to WUTC jurisdiction. However, in subsequent correspondence with the Port, WUTC Staff stated that additional tanks within the Airport Fuel Terminal were also subject to WUTC jurisdiction. See, e.g., November 20, 2007 letter from WUTC's Carole J. Washburn to the Port's Paul Agid; March 4, 2008 letter from WUTC's Carole J. Washburn to the Port's Paul Agid; April 3, 2008 letter from the Port's Paul Agid to WUTC's Carole J. Washburn. (Copies of these letters are attached as Exhibit B).

In the Fall of 2008, WUTC Staff changed its interpretation with respect to the scope of WUTC's jurisdiction over the Airport Fuel Terminal. At this time, WUTC Staff concluded that only Breakout Tank 115, and not other additional tanks, were subject to WUTC jurisdiction. According to correspondence between Swissport and WUTC Staff, this determination was made by WUTC Staff after consultation with Olympic regarding the scope of its SeaTac Lateral relief system located on the Airport Fuel Terminal.

As the above information clearly illustrates, the scope and nature of WUTC jurisdiction over any portion or tank within the Airport Fuel Terminal remained significantly unclear until only recently.

Under these unique circumstances, SEATAC LLC respectfully asserts that any enforcement action taken by the WUTC against Swissport would be unwarranted and counterproductive. Here, issues of sufficient fair notice regarding the WUTC's interpretation of the applicability of its pipeline safety requirements to the Airport Fuel Terminal are implicated. See, e.g., *General Electric v. EPA*, 53 F.3d 1324 (D.C. Cir. 1995) (holding that due process and fair notice require that a regulated party acting in good faith must be able to identify with ascertainable certainty the standards by which the agency expects the party to conform). Furthermore, as discussed below, since receiving the May 6 Inspection Letter, Swissport and SEATAC LLC have acted in good faith and have taken immediate steps to address and correct the probable violations identified by WUTC Staff.

### **III. Corrective Actions Taken to Address the Probable Violations in the May 6 Inspection Letter.**

Upon Swissport's receipt of the May 6 Inspection Letter, SEATAC LLC has taken steps to facilitate and coordinate Swissport's efforts to come into compliance with each probable violation. SEATAC LLC has responded to each of the probable violations in good faith by requesting Swissport to conduct a complete review of its Operations and Maintenance procedures manual, drug and alcohol-misuse testing programs, and all other relevant documentation of the Airport Fuel Terminal.

SEATAC LLC has also taken steps to engage Swissport, the Port, and Olympic in order to develop a comprehensive and meaningful response that contains a full analysis of each probable violation identified in the May 6 Inspection Letter. Communicating with all of these parties and organizing the pertinent information is critical to ensuring compliance with all applicable pipeline safety regulations.

During the walk-through portion of the WUTC Staff's hazardous liquid inspection of the Airport Fuel Terminal on April 7 to April 9, 2009, it is our understanding that no safety violations were identified regarding the pipeline facilities and Breakout Tank 115. However, as evidenced by the May 6 Inspection Letter, Swissport's records, manuals and policies reviewed by WUTC Staff were found to be probably incomplete and out of compliance with applicable state and federal requirements for Breakout Tank operators.

Swissport has taken the following good faith steps to correct the 12 probable violations and continues to work diligently to correct any unresolved probable violations.

On March 20, 2009, Swissport submitted its Annual Report (Form No. 024-025) to the WUTC – Pipeline Safety Section. (A copy of the Annual Report is attached as Exhibit C). The Annual Report was submitted pursuant to WAC 480-75-650. In the Annual Report, no safety related conditions as defined in 49 CFR § 195.55 were identified.

On May 20, 2009, Swissport provided Mr. Subsits, WUTC Staff, with a working draft copy of Swissport's updated and improved Breakout Tank 115 Manual. It is our understanding that on June 25, 2009, Mr. Subsits provided feedback to Mr. Nestor Soriano of Swissport on Swissport's draft Breakout Tank 115 Manual. Swissport has since taken steps to further address the comments received from Mr. Subsits. In addition, Swissport has authorized us to forward with this letter a complete copy of Swissport's updated Breakout Tank 115 Manual. (A copy of Swissport's updated Breakout Tank 115 Manual is attached as Exhibit D). Swissport's Breakout Tank 115 Manual is supported by its Local Procedures for M&O Manual, which is also included as part of Exhibit D.

Steps taken by Swissport to update and revise its Breakout Tank 115 Manual have addressed and corrected substantial aspects of the 12 probable violations identified in the May 6 Inspection Letter. However, because of the complex nature of Swissport's operations, including the interdependent relationships and interests among the Port, Olympic, and Swissport, certain probable violations cannot be fully addressed without assistance from and coordination with representatives from the Port and Olympic.

Accordingly, SEATAC LLC has taken the following continuing and ongoing steps to facilitate and coordinate Swissport's efforts to engage the Port and Olympic to ensure compliance with all applicable pipeline safety regulations.

On May 27, 2009, Swissport, SEATAC LLC and Olympic held a meeting to discuss steps the parties could take together to fully address certain probable violations listed in the May 6 Inspection Letter, including for example: obtaining necessary documentation from Olympic regarding welding procedures, obtaining testing records related to

Breakout Tank 115 and inspection procedures related to Olympic's relief system at the Airport Fuel Terminal. The parties also discussed the extent to which Swissport could coordinate with Olympic in developing Swissport's Public Awareness Program. (A copy of a July 6, 2009 letter from Olympic's Steve Maulding to SEATAC LLC's Jay Long is attached as Exhibit E).

On July 17, 2009, Swissport, SEATAC LLC and the Port met to discuss SEATAC LLC's request for documents that we believe are pertinent to addressing the 12 probable violations identified in the May 6 Inspection Letter. During this meeting, the Port agreed to provide documents regarding welding and welders who worked at the Airport Fuel Terminal during upgrades by the Port in 2005. The Port also agreed to review and comment upon the draft Public Awareness Program that is now being developed by Swissport for the Airport Fuel Terminal to ensure its consistency with the Port's Emergency Plan which includes emergency procedures for the Airport Fuel Terminal. (A copy of a July 7, 2009 letter from the Port's Susan Ridgley is attached as Exhibit F).

On June 18, 2009, the Port provided Swissport with a copy of the Port's welding specifications regarding Aboveground Storage Tank Modifications (Division 13 – Special Construction, Section 13345).

On June 24, 2009, the Port provided Swissport with an electronic copy of the Port's Seattle-Tacoma International Airport – Airport Emergency Plan, last revised on August 8, 2008. The Airport Emergency Plan has been approved by the Federal Aviation Administration ("FAA"). (A copy of the Airport Emergency Plan is attached as Exhibit G).

On July 2, 2009, Swissport and SEATAC LLC met with Lt. Jeff Gangnes of the Port of Seattle Fire Department ("Port Fire Department") to review existing Port Fire Department activities at the Airport Fuel Terminal and to discuss any further activity on a Public Awareness Program. In that meeting, Lt. Gangnes confirmed that the Port Fire Department has "incident command" at the Airport Fuel Terminal to be exercised in the event of a hazardous liquid pipeline emergency, and that the Port Fire Department's "incident command" is implemented under a nationally mandated system that applies in a range of emergencies including floods, earthquakes and fire. The Port Fire Department Fire Prevention Officer conducts monthly inspections of the Airport Fuel Terminals fueling system, equipment, fuel pits and loading racks and semi-annual inspections of the Airport Fuel Terminals' buildings. The Port Fire Department also has its own Response Plan, and in the meeting, Lt. Gangnes confirmed that further development of a Public Awareness Program for the Airport Fuel Terminal would need to "mesh" with the Port Fire Department's Response Plan. Lt. Gangnes also advised that the Port's public information officer should be engaged in the delivery of information to the public regarding the Airport Fuel Terminal to avoid confusion, inconsistency and unnecessary duplication of messages to the public.

Finally, in the meeting, the participants discussed Swissport's Local Procedure for Establishing and Maintaining Liaison with Fire Department, Police and appropriate Public Officials, a procedure maintained by Swissport in its operating manuals. This

Swissport procedure states that in the case of an emergency the Swissport Operator follows the notification list and procedures in Swissport's Fuel Contingency Plan which is a plan reviewed by the Port Fire Department.

The relevant Public Awareness Program requirements specified in 49 CFR §195.410(a) require that: "Each pipeline operator must develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's Recommended Practice 1162."

The steps taken by Swissport and SEATAC LLC to develop a Public Awareness Program for the Airport Fuel Facility are consistent with the American Petroleum Institute's ("API's") Recommended Practice 1162. API's Recommended Practice 1162 provides that Public Awareness Programs must be tailored to address a facility's unique circumstances, and that coordination with other pipeline companies in the development of a Public Awareness Program should be considered. For example, API's Recommended Practice 1162 provides in relevant parts:

For the development of a Public Awareness Program, this [Recommended Practice] recognizes that there are differences in pipeline conditions, release consequences, affected populations, increased development and excavation activities and other factors associated with pipeline systems. Accordingly, a 'one-size-fits-all' Public Awareness Program across all pipeline systems would not be the most effective approach.

API's Recommended Practice 1162 at p. 7 (emphasis added); see also p. 24.

Consideration should be given to joining with other pipeline companies in a local, regional or national setting (including both the local distribution company and transmission pipelines) to produce common message materials that can be either jointly sponsored, (e.g., include all sponsors company names/logos) or used as a 'shell' and then customized to each company's individual needs, to help ensure that a consistent message is being delivered.

API's Recommended Practice 1162 at Appendix D, p. 41 (emphasis added).

Swissport and SEATAC LLC will continue to coordinate Public Awareness Program implementation with the Port, Olympic and the Port Fire Department through efforts described above.

#### **IV. Conclusion.**

As discussed above, Swissport has taken extensive steps to update and revise its Breakout Tank 115 Manual. SEATAC LLC has made continued good faith efforts to facilitate and coordinate Swissport's efforts to engage the Port, Olympic and the Port Fire Department to address certain probable violations that cannot be fully addressed without assistance from and coordination with representatives of these organizations.

Under these unique circumstances, SEATAC LLC respectfully asserts that any enforcement action taken by the WUTC against Swissport would be unwarranted and counterproductive. This is not a matter that should be referred to an administrative law judge.

In order to fully address all probable violations identified in the May 6 Inspection, SEATAC LLC requested that WUTC Staff, Swissport and SEATAC LLC meet to discuss further steps for Swissport to demonstrate its full compliance with each probable violation. We look forward to meeting with WUTC Staff on July 21, 2009 at 1:30 p.m. to discuss with you the issues outlined in this submission. Please let us know if you have any questions regarding the above items before our upcoming meeting.

Sincerely,



Harry Edward Grant

of

RIDDELL WILLIAMS P.S.

Counsel to SEATAC Fuel Facilities LLC

CC:

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