



March 21, 2013

Senator Chip Shields
Chair, General Government, Consumer and Small Business Protection Committee
Oregon State Capitol
900 Court St. NE, Room 453
Salem, OR 97301

**Testimony on Senate Bill 814
Jessica Hamilton, General Manager, Harbor Environmental
Port of Portland**

I. Introduction

Chairman Shields and members of the committee, for the record my name is Jessica Hamilton, General Manager, Harbor Environmental.

The Port of Portland supports SB 814. This bill would assist the Port of Portland to facilitate the cleanup and restoration of the Willamette River Superfund Site and Portland International Airport sites.

Our goal is to get these sites cleaned up in a timely fashion, consistent with sound environmental cleanup and restoration principles and in a way that allows the Port to remain financially viable and competitive with other port authorities on the West Coast.

More than 75,000 jobs are tied to the existence of a vital marine port and international airport serving northwestern Oregon and the Pacific Northwest. More than \$14 billion dollars of cargo and 14 million passengers flowed through the Port of Portland last year.

Insurance cost recovery remains a key part of our strategy for getting cleanups and restorations done timely and affordably.

As you know, the Port is a local government as defined in ORS Chapter 174, and is financially independent from the State. Only 4 percent of our annual revenue derives from local property taxes.

We rely on business transactions to support our public mission. Whatever we spend on cleanup and restoration efforts diverts financial resources from investment in public infrastructure, economic development opportunities and traded-sector job retention and growth.

II. Insurance Issues

Like many others involved in environmental cleanup and restoration, the Port is looking to its insurance carriers for coverage under policies that were in force when the pollution occurred.

Our Port was founded in 1891. Over the course of its history, the Port has owned common-use ship yards to facilitate marine commerce, dredged the river for navigation and filled and developed adjacent land for industrial uses. During World War II, the Port made its yards available to support the war effort. In 1971, the City of Portland transferred its Commission of Public Docks marine cargo terminals to the Port.

Over the course of its history, the Port had substantial general liability insurance. The Port paid its premiums and upheld its end of the bargain. While we have settled with some of those carriers, the Port has significant outstanding, unresolved insurance claims.

The provisions of SB 814 will be of great assistance to us. The unfair environmental claims settlement practices prohibitions and associated remedies against insurers that engage in such practices will address the biggest obstacles the Port has faced in having its insurers respond to claims arising out of historical contamination at Port properties, including delayed processing of tenders, and slow or no payment on covered claims. Limiting the opportunity for manipulation by insurers will result in more resources being available to devote to cleanup and restoration. It is fundamentally unfair for parties like the Port, who faithfully paid their premiums, to be required to front the costs of cleanup and litigation while insurers delay making payouts on their policies.

I would like to touch on several of the important provisions.

A. Presumption of Good Faith Settlements

1. Policyholders that are subject to long-tail environmental claims should be free to negotiate settlements with one or more of their insurers without fear that such settlements will later be subject to baseless challenges by recalcitrant, non-settling insurers. Allowing such settlements to go forward, without undue risk of later litigation, helps to promote the timely restoration of the Portland Harbor and other contamination sites.
2. Insurers involved in long-tail environmental claims should similarly be able to negotiate good-faith settlements with their insureds without the risk of later facing claims for contribution or equitable indemnity from non-settling insurers.

3. The Port previously entered into settlements with a number of its insurers that resolved those insurers' Portland Harbor-related liabilities. Those settlements were entered into in good faith, based on the best technical information available at the time. Those settlements have also allowed the Port proactively to participate in the Portland Harbor investigation and remediation.
4. SB 814 would protect the Port and the previously settled insurers from unreasonable claims for contribution or equitable indemnity, because such claims could not be brought unless and until an insurer
 - 1) Pays all or part of an environmental claim on the Port's behalf; and
 - 2) Establishes that the Port's prior insurance settlements were not made in good faith. Because the Port's prior insurance settlements were entered into in good faith, this legislation would prevent unnecessary and expensive contribution or indemnity litigation.

B. No Requirement of Horizontal Exhaustion

1. SB 814 clarifies Oregon law, as set out in the Oregon Environmental Cleanup Assistance Act and as established by the Oregon Court of Appeals in *Cascade Corp. v. American Home Assurance Co.* 206 Or.App. 1 (2006); that is, an insurer whose policy is triggered must satisfy its insured's liability, up to the insurer's policy limits, without regard to what other insurance may be available to satisfy the same claim.
2. SB 814 also clarifies the single circumstance in which an insurer can delay payment, which is: when the insurer issues an excess policy and the specific underlying policy for that policy period has not yet been exhausted. Unless an insurance policy explicitly provides that it is excess to a specific underlying policy, and that underlying policy is not exhausted, the insurer must satisfy the insured's liability, up to the insurer's policy limits.
3. This provision would promote efficient claims handling and prevent insurers from engaging in lengthy and expensive legal battles over exhaustion issues, which would ultimately delay the availability of cleanup and restoration funds.

C. Free Assignment of Existing Claims for Payment

1. The restriction on assigning an insurance policy without an insurer's consent should not prevent the assignment to a successor entity of an existing claim under an insurance policy.
2. The City of Portland's transfer to the Port of its Commission of Public Docks marine cargo terminals should not be allowed to prevent the Port from relying on the Commission of Public Docks' remaining historical insurance coverage for losses and damages that had already occurred prior to the 1971 transfer.
3. The clarifying language will ensure that the Port may rely on the Commission of Public Dock's remaining historical insurance.

III. Conclusion

This legislation will promote more efficient, less costly, claims handling practices and make money and resources available without unnecessary delay to assist in cleaning up and restoring the Portland Harbor Superfund Site and PDX contamination sites. This will in turn ensure that they remain economic assets for our region.

Thank you for hearing this important bill. I would be happy to answer any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jessica Hamilton', with a long horizontal line extending to the right.

Jessica Hamilton
General Manager, Harbor Environmental