

0220-05598-0000

**TRANSMITTAL**

TO Eugene D. Seroka, Executive Director Harbor Department	DATE APR 26 2019	COUNCIL FILE NO.
FROM The Mayor	COUNCIL DISTRICT 15	

**PROPOSED PERMIT NO.936 WITH PBF ENERGY WESTERN REGION, LLC**

Transmitted for further processing and Council consideration.  
See the City Administrative Officer report attached.



Ana Guerrero

MAYOR

RHL:ABN:10190102t

REPORT FROM

## OFFICE OF THE CITY ADMINISTRATIVE OFFICER

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Date: April 22, 2019

CAO File No. 0220-05598-0000

Council File No.

Council District: 15

To: The Mayor

From: Richard H. Llewellyn, Jr., City Administrative Officer

Reference: Correspondence from the Harbor Department dated March 22, 2019; referred by the Mayor for report dated March 29, 2019

Subject: **PROPOSED PERMIT NO. 936 WITH PBF ENERGY WESTERN REGION, LLC**

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### RECOMMENDATION

That the Mayor:

1. Approve Harbor Department (Port) Resolution No. 19-8450 to authorize Permit No. 936 with PBF Energy Western Region LLC; and,
2. Return the document to the Port for further processing, including Council consideration.

### SUMMARY

The Harbor Department (Port) Board of Harbor Commissioners (Board) requests approval of Resolution No. 19-8450 authorizing proposed Permit No. 936 (Permit) with PBF Energy Western Region LLC (PBF) in the City of Torrance. The proposed Permit will grant PBF a 30-year lease agreement, beginning on the effective date of approval, and authority to use 40.04 acres of land and water at Berths 238 and 239 (berths) in the Port of Los Angeles (POLA). The Port states that the proposed Permit will authorize PBF to use the berths to construct, operate and maintain a marine oil terminal, subsurface pipelines, and storage tanks. In June 2018, the Port assessed, and the Board-certified approval of environmental requirements related to the Permit under the PBF Energy Marine Oil Improvement Project. According to the Port, the Permit is necessary to finance changes that are being made to the wharf structures at the berths to comply with the State of California's Marine Oil Terminal Engineering and Maintenance Standards (MOTEMS).

MOTEMS operates under the California State Lands Commissions (State Lands). MOTEMS establishes and regulates minimum engineering, inspection, oversight, maintenance and upgrade criteria for marine oil terminals and oil spills to protect public health, safety and the environment. There are 34 marine oil terminals dispersed throughout California. The MOTEMS require all marine oil terminals to undergo an audit to determine the fitness of their marine structures, needed repairs and upgrades for wharfs, embankments, piping, fire suppression, and electrical and mechanical systems. In accordance with the MOTEMS, the Port states that the existing wharfs at POLA berths have deteriorated and been classified in need of repairs and upgrades.

In 2011, the Port states that it completed a MOTEMS Implementation Strategy (MIS), which provided an organizational strategy and tenant guidelines to comply with the uniform strategies for all MOTEMS projects and a capital investment limitation of \$7.5 million. Under the MIS, the Port negotiated long term permits to allow both the POLA and its tenants to amortize large investments in newly constructed MOTEMS compliant facilities.

MOTEMS audited the marine oil terminal at PBF to determine the fitness of the wharfs, marine structures and other ancillary equipment. The Port states that the existing wharves at Berths 238 and 239 have experienced extensive deterioration and have been classified as unfit and in need of services by MOTEMS. As a result of the age of the wharves, the Port states that bringing the marine oil terminal in compliance with MOTEMS would be difficult and instead the Port recommends replacing, repairing and renovating the structure to bring it up to code. The Port states that the PBF and the POLA must repair and upgrade the existing wharfs to bring the marine oil terminal in compliance with MOTEMS regulations.

PBF is a subsidiary of PBF Holding Company and PBF Energy Inc. PBF Energy is one of the largest independent petroleum refiners and suppliers of unbranded transportation fuels, heating oil, and other petroleum products in the United States. The parent company has operated a marine oil terminal in the POLA on Terminal Island since 1923 and a crude oil storage terminal since 1961 under the auspices of Exxon Mobil Corporation (ExxonMobil). PBF purchased these oil terminal facilities from ExxonMobil in 2016. The Permit will supersede existing Permit 914, which has a current expiration date of June 2021, upon execution. PBF will be required to provide a performance bond of \$50 million to the Port to secure funding to restore the properties if PBF is not willing to enter a long-term lease. This requirement will expire upon execution of the proposed new Permit. Proposed Permit No. 936 will authorize PBF to continue using the POLA property and berths for a marine oil terminal, subsurface pipelines and storage tanks.

The Port and PBF reached a new, proposed 30-year Permit to continue the operations of the tenant's marine oil terminals, including project construction, related foundation supports, and equipment replacement. PBF is financially responsible for rental payments to the Port. Currently, PBF pays the Port a fixed rental compensation of approximately \$4,858,740 per year to lease the land, subsurface land, and water. Effective July 1, 2019, the Port states that PBF's annual fixed rental compensation for land rent will be \$6,236,794, or an increase of \$1,378,054 from the previous amount in the Permit. The Permit also will require an adjustment to the following: 1) rental amount based on an annual Consumer Price Index (CPI) and 2) a reset to rental amounts every five years, according to the real estate market rates and application charges in POLA Tariff No. 4. According to the Port, this includes the Board policy for the Rate of Return (ROR) on the land, annual CPI adjustments, and a 50 percent discount for authorized subsurface rights.

The Port states that minimum rental rate paid by PBF for the new wharves is approximately \$900,000 each year for each berth. In addition, rental rates on areas of POLA property containing storage tanks will pay fees of \$812,000, at the end of each year. According to the Port, if PBF's wharfage and dockage fees exceed \$1,712,000 per year, the minimum wharf and storage tank fees will be waived for that compensation year. In 2018, the Port states that PBF paid a total of \$1,340,987 in wharfage and dockage fees. According to the Port, the rental rate for the wharves will continue until PBF fulfills the POLA policy rate of a 12 percent Rate of Return (ROR) on land rent on the POLA's capital investment limitation of \$7.5 million per wharf structure.

The Port states that the minimum wharf rent is to guarantee that the \$7.5 million investment by the Port in the new wharfs will be paid back at 12 percent interest from business generated through the wharf and other fees. The \$7,500,000 x 12% will equal \$900,000 per year. The Port will cap the number of years that PBF will be subject to the minimum wharf rent. The proposed Permit includes the elimination of the minimum wharf rent obligation when the Port achieves the 12 percent target ROR from the POLA's investment of \$7.5 million. The minimum wharf rent is to guarantee that the \$7.5 million investment by the Port in the new wharf will be paid back at 12 percent interest in business generated through the wharf and other fees.

The Port estimates that to construct and fulfill the obligations of the new MOTEMS compliant loading project for the berth and mooring system (i.e., a place for securing vessels) would cost PBF approximately \$19,750,000. In addition, PBF will construct other project activities, such as piping, foundation supports, and equipment. The Port will invest up to \$7.5 million based on the MIS and PBF will be responsible for paying for any costs exceeding that amount. The Port also will be financially responsible for costs to maintain the rock slopes and engineer dredging depths of 35 feet or more for the two berths on the property. PBF will be responsible for MOTEMS requirements related to compliance with regulations and improvements for the property. This includes the wharf structure, property maintenance and operations, and other project features.

The City Attorney has approved the proposed Resolution as to form and legality. In accordance with Charter Section 696, the Mayor and Council approval are required because the lease term exceeds five years. The Port states that the Board reviewed the environmental assessment and certified the Final Environmental Impact Report (EIR) for this project in June 2018. Therefore, the Port has determined that the proposed action is administratively exempt from the requirements of the California Environmental Quality Act (CEQA) and Los Angeles City CEQA Guidelines.

## **FISCAL IMPACT STATEMENT**

The proposed Harbor Department (Port) request for Permit No. 936 (Permit) would ensure that the PBF Energy Western Region (PBF) would continue its marine oil terminal in the POLA and continue to pay the Port a fixed rental compensation for land rent of approximately \$6.2 million. In addition to the land rent, PBF will also be responsible for the payment of minimum rent for the wharf and storage tank of \$1.7 million each year. The Port estimates that construction of the new wharf projects to comply with MOTEMS will cost up to \$19.8 million. The Port will invest up to \$7.5 million and PBF will invest the balance and anything exceeding the total amount. The proposed compensation will meet the Port's rate of return for land and improvements. The proposed Permit is for 30 years, and will supersede existing Permit 914, upon execution. PBF will be responsible for all costs associated with property maintenance and operation, including payment for project features in the Permit.

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