

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WASHINGTON STATE
ENERGY FACILITY SITE EVALUATION COUNCIL
NATIONAL POLLUTANT DISCHARGE SYSTEM (NPDES) PERMIT
NO. WA-002515-1

PUBLIC HEARING

January 19, 2016

2:00 P.M.

Richard Hemstad Building
1300 South Evergreen Park Drive Southwest
Conference Room 206
Olympia, Washington

REPORTED BY: ANITA W. SELF, RPR, CCR #3032

Buell Realtime Reporting, LLC.
1325 Fourth Avenue
Suite 1840
Seattle, Washington 98101
206.287.9066 | Seattle
360.534.9066 | Olympia
800.846.6989 | National

www.buellrealtime.com

A P P E A R A N C E S

Councilmembers Present:

- Bill Lynch, Chair
- Jaime Rossman, Department of Commerce
- Cullen Stephenson, Department of Ecology
- Joe Stohr, Department of Fish and Wildlife
- Dennis Moss, Utilities and Transportation Commission
- Dan Siemann, Department of Natural Resources (via phone)

Assistant Attorney General:

- Ann Essko, Assistant Attorney General

Staff in Attendance:

- Stephen Posner
- Jim LaSpina
- Tammy Mastro
- Sonia Bumpus
- Kali Wraspir
- Joan Aitken

Guests in Attendance:

None

Guests in Attendance Via Phone:

None

* * * * *

1 OLYMPIA, WASHINGTON, JANUARY 19, 2016

2 2:00 P.M.

3 --o0o--

4 P R O C E E D I N G S

5

6 CHAIR LYNCH: Good afternoon. Today is
7 January 19th, 2016. This is a special meeting of the
8 Energy Facility Site Evaluation Council. It's for the
9 limited purpose of adopting some new permit language
10 that we have for the NPDES permit for the Columbia
11 Generating Station. The regular January EFSEC meeting
12 was cancelled.

13 So could we please have the clerk call the
14 roll.

15 MS. MASTRO: Department of Commerce?

16 MR. ROSSMAN: Jaime Rossman here.

17 MS. MASTRO: Department of Ecology?

18 MR. STEPHENSON: Cullen Stephenson here.

19 MS. MASTRO: Fish and Wildlife?

20 MR. STOHR: Joe Stohr is here.

21 MS. MASTRO: Department of Natural
22 Resources?

23 MR. SIEMANN (telephonically): Dan Siemann
24 is on the phone.

25 MS. MASTRO: And Utilities and

1 Transportation Commission?

2 MR. MOSS: Dennis Moss is here.

3 MS. MASTRO: Chair, there is a quorum.

4 CHAIR LYNCH: Thank you.

5 And could we please have Staff give us an
6 overview of where we are.

7 MR. LASPINA: I got it.

8 Thank you, Chairman Luce and -- sorry,
9 Chairman Lynch.

10 CHAIR LYNCH: Somebody was insulted. I'm
11 not sure if it was him or me, but please go ahead.

12 MR. LASPINA: In September of 2014, EFSEC
13 reissued the National Pollutant Discharge Elimination
14 System Permit to Energy Northwest for its Columbia
15 Generating Station.

16 At the Council's November 2015 meeting,
17 Staff notified the Council that a recent Court of
18 Appeals decision for another permit required
19 modification of the CGS permit.

20 The permit modification requires a public
21 comment period and public hearing before the
22 modification process can be completed.

23 I don't know if you want to -- if you want
24 me to read these several paragraphs.

25 CHAIR LYNCH: I don't see any reason to do

1 that.

2 MR. LASPINA: All right.

3 Public comment for the permit modification
4 began on December 21st, 2015, and will end on
5 January 21st, 2016. At this time, EFSEC Staff has not
6 received any public comments.

7 Today's actions. This is a formal hearing
8 to accept public comment on the permit modification.
9 Public comments will only be accepted on the proposed
10 revisions to conditions S13.B and D.

11 EFSEC Staff requests approval to issue the
12 modified permit provided no substantive comments are
13 received at either today's public hearing or by the
14 close of the public comment period at 5:00 p.m. on
15 January 21st, 2016, which is Thursday afternoon.

16 CHAIR LYNCH: So at this time, you're asking
17 to see if there's anyone on line who wishes to comment
18 from the public?

19 MR. LASPINA: Yes, Chair Lynch. What we're
20 really asking for is provisional approval. And if we
21 get no substantive comments either this afternoon or by
22 5:00 on Thursday, that -- that we can -- the Chairman
23 can sign the permit and we can reissue it.

24 CHAIR LYNCH: And how long is our hearing
25 open today for -- to receive public comment?

1 MR. LASPINA: There's no end time. We just
2 specified a start time. And if there's no comments,
3 you're free to close the hearing.

4 CHAIR LYNCH: Are there any questions from
5 councilmembers regarding this proposed action? As
6 Mr. LaSpina said, this is just to bring our current
7 NPDES permit for the Columbia Generating Station into
8 compliance with a recent court decision.

9 And I've had a chance to look at the
10 proposed rule, and it's -- it is a slow read, but once
11 you go through it, you see that it does, in fact, make
12 sense.

13 Are there any questions from councilmembers?

14 MR. MOSS: I have one.

15 CHAIR LYNCH: Yes, Councilmember Moss.

16 MR. MOSS: My question is, assuming you do
17 receive substantive comments before 5:00 p.m. on
18 January 21st, what happens then?

19 MR. LASPINA: If we receive a substantive
20 comment -- and "substantive" means that it's -- it has
21 to do -- it's a meaningful comment about the revision
22 itself, then I would discuss this with my managers then
23 and we would decide what to do.

24 MR. MOSS: Presumably, it would have to come
25 back before the council?

1 MR. LASPINA: Yes. Yes.

2 CHAIR LYNCH: And there would be some
3 response to comment, or summary of the comment that
4 would be required because it's a permit.

5 MR. LASPINA: Yes.

6 CHAIR LYNCH: All right. Okay.

7 So I guess at this point in time --

8 MR. ROSSMAN: Well, couple more questions.

9 CHAIR LYNCH: Oh, please, yes.

10 MR. ROSSMAN: I just want to make sure I'm
11 following the change exactly, and I understand it's very
12 small and technical in nature.

13 But looking at the struck-through text on
14 page 29 of the permit, it seemed like previously if
15 there was a -- if there was a negative test result, it
16 refers to a lot of additional testing in Section C.

17 Was that -- was that mislabeled? Was that
18 intending previously to refer to the additional testing
19 in Section D?

20 MR. LASPINA: Could you -- could you repeat
21 the question, please?

22 MR. ROSSMAN: Yes. The struck-through
23 language says that, you know, if the test shows a
24 statistically significant difference in survival between
25 the control and the ACEC, the permittee must immediately

1 conduct the additional testing described in Section C,
2 and then goes on to describe the additional testing
3 required by Section C. I'm looking at the
4 struck-through portion here.

5 And I'm wondering if that was -- should that
6 have originally been a reference to Section ^D~~B~~, which
7 seems to refer to sort of the additional testing? Or is
8 that a reference -- was that a direct reference back to
9 Section C, which seems to refer to the periodic
10 quarterly testing?

11 MR. LASPINA: Oh, you're saying the language
12 that is struck out?

13 MR. ROSSMAN: Yes.

14 CHAIR LYNCH: I should have -- I'm sorry,
15 Councilmember Rossman, I -- actually, on a piece of
16 paper in my office, I had worked this all out, and I
17 should have brought that with me.

18 But you'll see that there are -- there is
19 different testing provisions in here. And if you look
20 at the top of page 29 there, it talks about "If the test
21 shows a statistically significant difference in survival
22 between the control and the acute critical effluent
23 concentration test," then it says "and EFSEC has not
24 determined the test result to be anomalous under Section
25 D," and then it goes on from there.

1 And then if you were to look at Section D,
2 there's a provision there for -- there's -- under
3 "Anomalous test results," it says, if -- the second
4 paragraph, "If EFSEC determines that the test result was
5 not anomalous," then they have to complete all this
6 additional monitoring and then there's testing.

7 And then [as read] "If EFSEC determines the
8 test result was anomalous, the additional test -- the
9 one additional test result will replace..."

10 So I'm sorry I don't have it all laid out
11 for you, but there is the -- all I can say to you is
12 that the -- how it's written is, in fact, accurate. I'm
13 sorry I don't have -- I should have probably brought
14 that grid with me, but it actually does make sense.

15 MR. LASPINA: Well, actually, I think I
16 could provide some context.

17 The rule says that a failed wet test is a
18 violation of the permit. However, when the permit
19 boilerplate was written, it gave the permittee another
20 chance to prove that it was -- to confirm the failure.

21 MR. ROSSMAN: Okay. So --

22 MR. LASPINA: So the crossed-out text would
23 point you to D or -- to C, which is normal compliance
24 testing, whereas now that -- now that a failed test is a
25 permit violation, now you go into Section D, which is

1 for noncompliance.

2 MR. ROSSMAN: Got it. Okay.

3 MR. LASPINA: Does that make sense?

4 MR. ROSSMAN: So in both the previous and
5 the current case, after a failed test, there would be
6 additional testing. But in the -- the change means that
7 that first one is a violation of the permit.

8 MR. LASPINA: Exactly right.

9 MR. ROSSMAN: Are there any other
10 implications about what then happens with that violation
11 in the permit, or is the additional testing the only
12 remedy that happens at that stage?

13 MR. LASPINA: Well, I can tell you that if
14 the failed test gets failed again, then the permittee is
15 required to do an engineering analysis to figure out
16 where the toxicity's coming from.

17 CHAIR LYNCH: In fact, if you look on the
18 bottom of page 30, it says, If the additional testing in
19 this section shows another violation of the acute
20 toxicity limit, the permittee must submit this
21 particular evaluation plan to EFSEC within 60 days of
22 the sample date.

23 MR. LASPINA: And that's essentially an
24 engineering report that -- to track down where that
25 toxicity's coming from.

1 MR. ROSSMAN: Okay. Thank you. Sorry for
2 belaboring what was probably obvious to everybody else
3 in the room.

4 MR. LASPINA: That's okay.

5 CHAIR LYNCH: Councilmember Stephenson.

6 MR. STEPHENSON: Thank you, Chair Luce.

7 Thank you, Chair Luce -- Lynch.

8 Just to confirm -- and I think Councilmember
9 Rossman was good at trying to parse this out -- I talked
10 to the Ecology folks that are on our side of the
11 firewall who have been working on this, and they've
12 confirmed to me that this is language that is being
13 applied to just a few permits per the Court order, and
14 that they are satisfied that the EFSEC language meets
15 what they're doing with their permits.

16 So I think this is right and appreciate the
17 scrutiny. But when I asked them, they said, yes, this
18 is the right thing.

19 So thanks again.

20 CHAIR LYNCH: All right. Thank you.

21 And I think Mr. LaSpina summarized it well.
22 Section C now is the -- just the regular compliance
23 testing, and Section D is what happens if you have
24 noncompliance. And that contains both situations where
25 it's deemed anomalous and when it is determined not to

1 be anomalous.

2 Any further questions by councilmembers?

3 I guess at this point in time, I would
4 entertain a motion for the Council to give conditional
5 approval to this new permit language, and the condition
6 would be that we would receive no substantive public
7 comments by the time of the close of the public comment
8 period, January 21 of 2016.

9 And if there are no substantive comments,
10 then we would -- the Staff would consider that the
11 permit -- this modification language is adopted and
12 would include it as part of the permit language.

13 MR. STEPHENSON: Chair Lynch, I will so
14 move.

15 CHAIR LYNCH: Do we have a second?

16 MR. MOSS: I'll second that.

17 CHAIR LYNCH: It's been moved and seconded
18 that the Council grant conditional approval of the
19 proposed permit modification.

20 Any further discussion?

21 All those in favor, say "aye."

22 MULTIPLE SPEAKERS: Aye.

23 CHAIR LYNCH: Opposed?

24 Motion carries.

25 MR. LASPINA: Thank you, councilmembers and

1 Chair Lynch.

2 CHAIR LYNCH: And do we have any further
3 business in front of us today?

4 Hearing none, Council's adjourned. I
5 appreciate all of you being available for this today.

6 Thank you.

7 (Hearing adjourned at 2:14 p.m.)

8

9 -o0o-

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I, ANITA W. SELF, a Certified Shorthand Reporter
in and for the State of Washington, do hereby certify
that the foregoing transcript is true and accurate to
the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my hand
and seal this 28th day of January, 2016.

ANITA W. SELF, RPR, CCR #3032