

**WASHINGTON STATE
ENERGY FACILITY SITE EVALUATION COUNCIL**

RESOLUTION NO. 320

***CHERRY POINT COGENERATION PROJECT
Withdrawal of Site Certification Agreement Amendment Request and
Change of Construction Laydown Area***

Nature of Action

BP West Coast Products LLC (BP) is the Certificate Holder of the Site Certification Agreement (SCA) governing the Cherry Point Cogeneration Project (Cherry Point Project or Project). By letter dated January 24, 2007, BP requested that the Council withdraw the BP request, dated November 21, 2006 to amend the SCA and approve by resolution the following changes:

- Withdrawal of the SCA amendment request dated November 21, 2006.
- Amend the BP National Pollution Discharge Elimination System (NPDES) permit application by describing in writing what areas will be used for construction laydown, and how the BP refinery activities on Laydown Area 2 may impact the Project's stormwater treatment system.

Background

On December 21, 2004, Governor Gary Locke executed a Site Certification Agreement on behalf of the State of Washington authorizing the construction and operation of the Cherry Point Project. Construction of the project is scheduled to begin April 2007.

In a letter dated November 21, 2006, BP notified the Council that BP no longer intended to use the area described in the original site certification application (application) as Laydown Area 2. Because BP's application had identified this Laydown Area, and the SCA incorporates the Application by reference, BP requested the Council to amend the SCA.

In meetings between BP and EFSEC agreement was reached that an amendment to the SCA is not required for the following reasons. The SCA does not reference or describe the specific laydown areas, and the legal description attached to the SCA does not include the areas that were to be used temporarily for construction laydown. Therefore, BP's proposed change in the areas used for laydown would not require any change in the language of the SCA.

In addition, the NPDES Permit issued by the Council need not be amended. BP's November 21, 2006 letter, noted that the NPDES permit did not identify the laydown areas specifically. The NPDES permit generally authorizes the discharge of stormwater from areas used for construction of the Cherry Point Project and imposes various conditions and monitoring requirements with respect to those discharges. This matter was discussed with EFSEC and Ecology staff, and there was consensus that the permit need not be amended. Rather, BP was requested to provide EFSEC with a letter that would amend its NPDES permit application by explaining what areas

will be used for construction laydown, and explaining how the Refinery's activities on Laydown Area 2 may impact the Cogeneration Project's stormwater treatment system.

By application submitted April 2003, BP requested that EFSEC issue an NPDES permit authorizing the discharge of stormwater during construction of the Cogeneration Project. This application stated that construction activities would take place on the Project Site as well as on four laydown areas: Laydown Area 1 (located south of Grandview Road and west of Blaine Road); Laydown Area 2 (located between Laydown Area 1 and Grandview Road); Laydown Area 3 (located between Laydown Area 1 and Blaine Road), and Laydown Area 4 (located south of Grandview Road, and west of Blaine Road).

BP's Application for Site Certification explained that BP would fill these four laydown areas, cover them with a gravel surface, and use them for materials storage, equipment staging and other construction activities. After the completion of construction, Laydown Areas 1, 2 and 3 were to be turned over to the Refinery for further use. Laydown Area 4 was to be restored.

BP does not now intend to use Laydown Area 2 for the Cogeneration Project. Instead, the Refinery would like to proceed to develop that area and use it for Refinery facilities. In exchange for being able to make immediate use of this area, the Refinery will make existing developed areas south of the Cogeneration Project site available to the Cogeneration Project for use during construction. The Cogeneration Project will comply with the Refinery's existing permit conditions in using those areas.

Under the laydown configuration now proposed, the Cogeneration Project will develop and implement a Stormwater Pollution Prevention Plan (SWPPP) to cover Laydown Areas 1, 3 and 4. Stormwater from Laydown Areas 1 and 3 will be directed to Detention Pond 2, shown on the enclosed Figure, and stormwater from Laydown Area 4 will be directed to Detention Pond 1.

As discussed with Ecology and EFSEC, the Refinery will be responsible for obtaining whatever additional permits are required to utilize the area of the site previously referred to as Laydown Area 2. It is anticipated that stormwater associated with the Refinery's use of this land would discharge to Detention Pond #2, which would be sized accordingly. Under their respective NPDES permits, the Cogeneration Project and the Refinery would both be responsible for ensuring the discharges from Detention Pond #2 comply with permit requirements.

Discussion

WAC 463-66 outlines the relevant factors that the Council shall consider related to amending transferring or terminating a SCA. This section is not relevant to this matter as it has been determined that an SCA amendment is not required.

A. Consistency with applicable laws and rules.

EFSEC and the Department of Ecology staff have determined that BP's request to change the areas used for laydown requires an amendment to the NPDES application and not an amendment to the NPDES permit. Therefore, submittal of the letter dated January 24, 2007 from BP may serve as an amendment to the NPDES permit application.

1. Consistency with NPDES Permit No. EFSEC 2002-01, Attachment 4, BP SCA

Sections G3, G4 and G21 of the NPDES permit describe BP's requirements to provide new information. By submitting the letter dated January 24, 2007 BP has met the requirement to provide necessary information related to changes in the operation of the Cherry Point project.

B. Conclusion

The Council concludes that the proposed request to:

- Withdraw the SCA amendment request

And

- Amend the BP NPDES permit application by describing in writing what areas will be used for construction laydown, and how the BP refinery activities on Laydown Area 2 may impact the Project's stormwater treatment system

Are consistent with public health, safety and welfare; the applicable law; and the intent of the SCA.

The Council hereby determines that it is appropriate to approve the proposed changes in the Cherry Point project; *provided* BP shall continue to implement mitigation measures identified in the SCA.

RESOLUTION

For the foregoing reasons, the Council approves the following requests for the BP Cherry Point Cogeneration Project:

- Withdrawal of the SCA amendment request.
- Amend the BP NPDES permit application by describing in writing what areas will be used for construction laydown, and how the BP refinery's activities on Laydown Area 2 may impact the Project's stormwater treatment system.

DATED at Olympia, Washington and effective on February 13, 2007.

WASHINGTON ENERGY FACILITY SITE EVALUATION COUNCIL

By: _____
James O. Luce, Chair

Attested: _____
Allen J. Fiksdal, EFSEC Manager