BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of the Petition of COLUMBIA RIVERKEEPER For Declaratory Order Re: Jurisdiction Over KALAMA METHANOL MANUFACTURING AND EXPORT FACILITY	DOCKET NO._____ NORTHWEST INNOVATION WORKS, KALAMA, LLC's OBJECTION TO COLUMBIA RIVERKEEPER'S PETITION FOR DECLARATORY ORDER

I. Introduction and Background

Northwest Innovation Works, Kalama, LLC ("NWIW") is the permit applicant for the Kalama Manufacturing & Marine Export Facility Project ("Project" or "Facility") proposed at the Port of Kalama, Washington. NWIW objects to Columbia Riverkeeper's ("Riverkeeper") petition requesting that the Energy Facilities Site Evaluation Council ("EFSEC" or "Council") issue a declaratory order pursuant to RCW 34.05.240. Under the Administrative Procedures Act ("APA"), EFSEC may not enter a declaratory order that would substantially prejudice the rights of a necessary party that does not consent in writing to the determination of the matter by a declaratory order proceeding. RCW 34.05.240(7).

NWIW and the Port of Kalama (the "Port") are the applicants for the various permits necessary for the Project that is the subject of the petition and, therefore, necessary parties. With its request, Riverkeeper aims to disrupt and render meaningless 23 months of permitting and environmental review that is currently pending before the Washington Department of Ecology

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760 SW Ninth Avenue, Suite 3000, Portland, OR 97205-2584
Telephone (503) 224-3380

("Ecology"), the Southwest Washington Clean Air Agency, and Cowlitz County (the "County"), on property owned by the Port. Any disposition by declaratory order and imposition of EFSEC jurisdiction would impose significant, unnecessary delays and substantially increased costs associated with the Project review and approval.

Due to the substantial prejudice that would be imposed by the proceeding, NWIW does not consent to the determination of this matter by declaratory order. Before submitting any permit applications, NWIW sent a letter (August 26, 2014) to EFSEC specifically requesting it to make a determination with respect to its possible jurisdiction over the Project. Declaration of Godley; *see also* Exhibit 5 to Riverkeeper's Petition for Declaratory Order, pp. 1-3. By letter dated September 3, 2014, EFSEC's manager Stephen Posner replied, "After consideration of the information in your letter and relevant statutory requirements, we have determined the proposed facility is not subject to Energy Facility Site Evaluation Council jurisdiction." Declaration of Godley; Exhibit 6 to Riverkeeper's Petition. In reliance on that letter, NWIW and the Port have been preparing permit applications since at least September 3, 2014. The Port and NWIW have expended several million dollars to prepare technical materials, to conduct environmental analysis, to support preparation of the environmental impact statement, and to prepare permit applications as required by the agencies with jurisdiction. This entire process has been transparent to the public, involving multiple opportunities for public comment.

As described in the Declaration of Tabitha Reeder, Riverkeeper has participated in two public processes at the state level: (1) during State Environmental Policy Act ("SEPA") scoping, Riverkeeper submitted extensive comments dated December 4, 2014; and (2) Riverkeeper submitted extensive comments dated April 1, 2016 on the draft environmental impact statement

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Telephone (503) 224-3380

("EIS") proposed for comment by the County and the Port. Riverkeeper did not question jurisdiction of the Port and County in either set of comments and never suggested that EFSEC should have jurisdiction. Riverkeeper also submitted comments dated November 5, 2015 in response to the U.S. Army Corps of Engineers ("USACE") and Ecology joint public notice for the Clean Water Act § 404 permit and Rivers and Harbors Act § 10 permit application, and similarly did not question Ecology's jurisdiction. Because NWIW does not consent, the Council may not consider NWIW's request as a matter of law.

II. Facts

The Facility at the heart of the Riverkeeper petition is not an energy facility but a chemical manufacturing plant, one that would chemically reform natural gas to methanol. Methanol is a type of alcohol used to produce olefins and other materials that are the primary building blocks for many synthetic materials used in consumer and industrial products, including plastics, textiles, and other materials. The methanol produced at the Facility would be stored on site and transported via marine vessel to markets primarily in Asia. To accommodate these marine vessels, the Facility would include a marine terminal and dock owned and operated by the Port.

As described in the Declaration of Tabitha Reeder, the Project is subject to environmental review under SEPA. The Port and the County serve as co-lead agencies for the SEPA environmental review. The lead agencies requested public comment from November 7, 2014 to December 7, 2014 on the scope of their environmental review, and they held a public meeting on November 20, 2014 to hear comments. A draft EIS for the Project was released for public comment on March 3, 2016, and the public comment period ended on March 22, 2016. The lead

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760 SW Ninth Avenue, Suite 3000, Portland, OR 97205-2584
Telephone (503) 224-3380

agencies held a public hearing on the draft EIS on March 22, 2016. The SEPA lead agencies are currently in the process of responding to those comments, after which they will complete the final EIS, expected to be released to the public in September 2016.

III. NWIW's Objections

A. NWIW Does Not Consent to Riverkeeper's Request

An agency "may not enter a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding." RCW 34.05.240(7). NWIW does not consent to the determination of the matter by a declaratory order proceeding. NWIW is a necessary party, and the requested declaratory order would substantially prejudice NWIW's rights.

1. NWIW Is a Necessary Party

As the applicant for all permits for the methanol production portion of the Project,[1] NWIW is a necessary party to the Riverkeeper declaratory order proceedings. The APA does not expressly define "necessary party" but defines a "party" to an agency proceeding as "(a) [a] person to whom the agency action is specifically directed; or (b) [a] person named as a party to the agency proceeding or allowed to intervene or participate as a party in the agency proceeding." RCW 34.05.010(12). This approach is likewise consistent with superior courts' use of the term "necessary party" when determining whether a party must be joined to a civil action pursuant to Washington Superior Court Civil Rule 19(a). In that context, courts have recognized that a project developer whose proposal is the subject of a complaint is a necessary

[1] The Port is the applicant for permits related to the dock and related infrastructure.

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party to the proceeding.[2] Additionally, other agencies tasked with interpreting RCW 34.05.240(7) have concluded the applicant of a project that is the subject of a petition for declaratory order is a necessary party.[3]

NWIW easily satisfies these definitions: a declaratory order issued by the Council would be "specifically directed" at NWIW, NWIW is named in the Riverkeeper petition, and NWIW's permit applications are the subject of the Riverkeeper petition. Thus, NWIW, as the applicant of the Project at the heart of this petition, is a necessary party.

2. The Requested Order Would Substantially Prejudice NWIW's Rights

NWIW's rights would be substantially prejudiced by the Council's consideration and determination of this matter by declaratory order proceeding. Agencies interpreting RCW 34.05.240(7) have read this provision to require an only minimal demonstration of "substantial prejudice," with some agencies assuming, absent factual considerations, that a necessary party withholding consent to a declaratory order is per se substantially prejudiced by that order. *See* Letter from Ecology to Center for Environmental Law and Policy dated Jan. 8, 2009 regarding

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[2] *See, e.g., Nat'l Homeowners Ass'n v. City of Seattle*, 82 Wn. App. 640, 643, 919 P.2d 615 (1996) (dismissing lawsuit challenging City's approval of mobile home park relocation plan that had been prepared by project developer where plaintiff homeowners association failed to name project developer that had "invested considerable time and money in designing, planning, and obtaining permits for the project"); *S. Hollywood Hills Citizens Ass'n v. King County*, 101 Wn.2d 68, 77, 677 P.2d 114 (1984) (noting "there is no question that the property owners in a plat dispute are indispensable parties"); *Veradale Valley Citizens' Planning Comm. v. Bd. of Cty. Comm'rs of Spokane Cty.*, 22 Wn. App. 229, 232-33, 588 P.2d 750 (1978) (A "property owner-applicant is a necessary party because he is 'most affected' by the granting of the writ of review, and he should be a party to any proceeding, the purpose of which is to invalidate or affect his interests.").

[3] *See, e.g.*, Order Dismissing Petition for Declaratory Order, *In re Petition of Quinault Indian Nation*, No. 14-001, slip op. at 5 (Wash. Energy Facility Site Evaluation Council Feb. 12, 2015) (explaining project developers, "as the project applicants," were necessary parties to the declaratory order proceeding); Letter from Ecology to Center for Environmental Law and Policy dated Jan. 8, 2009 regarding "Petition for Declaratory Order on Stock Watering Purposes Exemption," http://www.ecy.wa.gov/programs/wr/wrac/images/pdf/010909celp_swresponse.pdf (concluding that property owner and proponent of project to develop a new feedlot is a "necessary party" due to the declaratory order's focus on the project); Order of Dismissal, *Noreen v. City of Burien*, No. 03-006, 2003 WL 1441309, at *1 (Wash. Shoreline Hearings Bd. Mar. 18, 2003); *see also* Order of Dismissal, *Boeing Co. v. Wash. State Bd. of Ecology*, No. 11-050, 2011 WL 3546624, at *3 (Wash. Pollution Control Hearings Bd. Aug. 5, 2011) (relying on other administrative boards' interpretation of RCW 34.05.240(7) as requiring consent of the regulated entity before accepting a petition for declaratory order).

STOEL RIVES LLP
ATTORNEYS
760 SW Ninth Avenue, Suite 3000, Portland, OR 97205-2584
Telephone (503) 224-3380

"Petition for Declaratory Order on Stock Watering Purposes Exemption," http://www.ecy.wa.gov/programs/wr/wrac/images/pdf/010909celp_swresponse.pdf ; Order of Dismissal, *Noreen v. City of Burien*, No. 03-006, 2003 WL 1441309, at *1 (Wash. Shoreline Hearings Bd. Mar. 18, 2003); *see also* Order of Dismissal, *Boeing Co. v. Wash. State Bd. of Ecology*, No. 11-050, 2011 WL 3546624, at *3 (Wash. Pollution Control Hearings Bd. Aug. 5, 2011).

This Council previously has held a necessary party is substantially prejudiced for the purposes of RCW 34.05.240(7) when a declaratory order imposes "time delays and additional costs" upon a project, particularly when such burdens emerge "late in the [permitting] process." Order Dismissing Petition for Declaratory Order, *In re Petition of Quinault Indian Nation*, No. 14-001, slip op. at 6 (Wash. Energy Facility Site Evaluation Council Feb. 12, 2015). Such a finding does not require a quantification of these additional costs imposed. *Id.* at 7.

The significant temporal delays and additional costs a determination by declaratory order here would impose upon NWIW quite clearly constitute the "substantial prejudice" contemplated by RCW 34.05.240(7). As discussed above, EFSEC issued its letter on September 3, 2014 stating that it does not have jurisdiction over the Project. Since that date, and in reliance on EFSEC's letter, NWIW and the Port have expended several million dollars and 23 months to prepare technical materials, to conduct environmental analysis, to support preparation of the environmental impact statement, and to prepare permit applications as required by the agencies with jurisdiction (including Shoreline Management Act permits). *See* Godley Declaration. This does not include the time and expense incurred by the various state agencies in processing the Project applications. On July 19, 2016, the Cowlitz County Department of Building & Planning

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Telephone (503) 224-3380

circulated its "Notice of Complete Application" concerning the five key local permit applications currently under review, including Shoreline Management Act conditional use and substantial development permits. **Exhibit 1**, attached hereto. Hence, 23 months into seeking permits, local hearing dates are now imminent. Were EFSEC to assert jurisdiction, this progress would be rendered moot. And, like in *Quinault Indian Nation*, were the Council to assume jurisdiction over the proposed Facility, EFSEC itself would likely need to hire additional staff, who in turn would have to familiarize themselves with the proposal, imposing even more delays. Under EFSEC's agency cost allocation scheme, these needless costs would be charged to the applicant.

To halt the permitting process at this juncture to initiate a new and unnecessary proceeding before another state agency under a different statutory process, as Riverkeeper requests, would result in significant and undue delays and costs that would substantially prejudice NWIW's rights. The EFSEC process requires several formal steps including filing an application for site certification ("ASC") consistent with EFSEC's statutory and regulatory requirements, providing notice, and conducting initial public hearings, a land use consistency determination, and an EFSEC-led environmental review (EFSEC would be required to seize SEPA lead agency status). Riverkeeper would certainly contend that EFSEC's environmental review would likely need to recommence, *from scoping*, with a complete re-initiation of the SEPA process. Were EFSEC to assume jurisdiction by declaratory order, NWIW would be forced to complete these additional steps, which are largely duplicative in nature to those steps already initiated by the Co-Leads for the Shoreline Permit.

The prejudice threatened by increased delay and costs is only heightened by the time Riverkeeper let pass before initiating this request. In *Quinault Indian Nation*, a petitioner

STOEL RIVES LLP
ATTORNEYS
760 SW Ninth Avenue, Suite 3000, Portland, OR 97205-2584
Telephone (503) 224-3380

requested a declaratory order long before the draft EIS for the Project was even released for public comment, yet this Council considered that intervention to be "late in the process." *Id.* at 6. Here, the County and the Port released the draft EIS for public comment on March 3, 2016, and the public comment period ended on March 22, 2016. The SEPA lead agencies are in the process of responding to public comments and completing the final EIS. The final EIS is expected to be released to the public in September 2016. If the *Quinault* petition was considered tardy, then Riverkeeper's is outright untimely.

As described in the Declaration of Tabitha Reeder, the Riverkeeper petition is particularly untimely since Riverkeeper has been participating in the permitting process without objection at least since the fall of 2014. As noted above, by letter dated December 4, 2014, Riverkeeper submitted comments on the proposed scope for the SEPA process. By letter dated April 1, 2016, Riverkeeper submitted extensive comments on the draft EIS. In neither process did Riverkeeper even suggest that EFSEC should or does have jurisdiction over the Project. Riverkeeper also submitted comments dated November 5, 2015 in response to the USACE and Ecology joint public notice for the Clean Water Act § 404 permit and Rivers and Harbors Act § 10 permit application, again without any suggestion of the possibility of EFSEC jurisdiction. Had Riverkeeper mounted this attack earlier, NWIW would have had more time and opportunity to address Riverkeeper's concerns at a more appropriate juncture through a more appropriate channel. Initiating the petition so late in the process, despite Riverkeeper's active participation in the SEPA process and other permitting processes, not only forces NWIW to revisit steps already completed but also further exacerbates the prejudice Riverkeeper's request already poses.

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760 SW Ninth Avenue, Suite 3000, Portland, OR 97205-2584
Telephone (503) 224-3380

In a nutshell, RCW 34.05.240 is intended to prohibit "snake in the grass" attacks by parties seeking the strategic advantage of latent disruption in orderly agency proceedings.

In sum, the entry of a declaratory order in this case would substantially prejudice NWIW, a necessary party that has not consented to the declaratory order process. As such, under RCW 34.05.240(7), the petition should be dismissed.

B. EFSEC Has No Statutory Jurisdiction over the Facility

As stated above, NWIW objects to EFSEC considering Riverkeeper's petition. Hence, EFSEC is without authority to consider the merits of whether the Facility is subject to EFSEC's jurisdiction. Without waiving its position pursuant to RCW 34.05.240(7), NWIW responds to the substance of Riverkeeper's petition, in order to establish a clear record before EFSEC in case of future litigation of this matter, demonstrating that NWIW carefully and appropriately considered whether EFSEC has jurisdiction over the Facility. EFSEC's prior determination of this matter[4] was appropriate and correct. EFSEC's role and September 3, 2014 determination was thoughtful and entirely consistent with the law.

1. Riverkeeper's Interpretation of the Terms "Petroleum" and "Natural Gas" Are Deeply Flawed

Contending that EFSEC must assert jurisdiction over the Facility, Riverkeeper relies exclusively on a non-regulatory source, which Riverkeeper selectively quotes and then misapplies. The definition cited by Riverkeeper is derived from a sub-webpage entitled "What Is Petroleum?" from the Association of Petroleum Geologists' ("AAPG") website. The AAPG

[4] As discussed above, in a letter dated August 26, 2014, NWIW sought to formalize its understanding that the Facility is not subject to EFSEC's jurisdiction. The letter includes a description of the Facility, and evaluates whether it falls within any of the definitions in RCW 80.50.020. In a letter dated September 3, 2014, EFSEC Manager Stephen Posner responded, confirming its determination that the Facility is not subject to EFSEC's jurisdiction. Declaration of Vee Godley.

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definition was actually pulled from the American Heritage Dictionary, though no edition is specified. The definition of "petroleum," in its entirety, as quoted on the website, reads:

> A thick, flammable, yellow-to-black mixture of gaseous, liquid, and solid hydrocarbons that occurs naturally beneath the earth's surface, can be separated into fractions including natural gas, gasoline, naphtha, kerosene, fuel and lubricating oils, paraffin wax, and asphalt and is used as raw material for a wide variety of derivative products.

Am. Ass'n of Petroleum Geologists, Petroleum Through Time, What Is Petroleum?, http://www.aapg.org/about/petroleum-geology/petroleum-through-time/what-is-petroleum (last visited July 26, 2016).

This definition lacks any regulatory meaning and, quoted in its entirety, confirms that natural gas is not "petroleum" and that petroleum can be "separated" into a number of "fractions," which could include methane and other hydrocarbons. To be clear, as Riverkeeper's own source, the AAPG, explains, methane (the principal constituent of natural gas) can be produced from the same coalbeds in which crude oil also exists. Am. Ass'n of Petroleum Geologists, Methane Questions Answered, http://www.aapg.org/publications/news/explorer/column/articleid/20539 (last visited July 26, 2016). Natural gas, however, is present in the earth independently of crude oil and, through directional drilling, is routinely extracted directly from the earth without disturbing crude or any other form of petroleum. *Id.*; *see also* U.S. Dep't of Energy, Producing Natural Gas From Shale (Jan. 26, 2012), http://energy.gov/articles/producing-natural-gas-shale (explaining how "natural gas [is] trapped inside formations of shale . . . that can be rich sources of natural gas and petroleum"). The mere fact that methane can be (but need not be) produced from the same physical source as crude oil does not mean that natural gas is somehow a subset of petroleum.

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The general consensus definition that emerges from industry and regulatory agencies with jurisdiction is that "petroleum" refers to oil, typically crude oil. As discussed below, RCW 80.50.020 itself deliberately uses the terms "petroleum," "natural gas," and "liquefied petroleum gas" separately, and for distinct regulatory purposes.[5] It is neither consistent with the legislative scheme nor is it reasonable to "mix and match" these clear and separate terms, for the purpose of imposing jurisdiction over the Facility. Such a strained interpretation violates Washington's fundamental rules of statutory construction.

2. Riverkeeper's Strained Interpretation of RCW 80.50.020 Would Extend EFSEC's Jurisdiction Well Beyond EFSEC's Legal Authority

Riverkeeper interprets (construes) several subsections of RCW 80.50.020 to contend that the Facility is subject to EFSEC's jurisdiction. EFSEC is obligated to avoid such exercises in statutory interpretation. EFSEC must follow the judicial mandate that the primary goal in interpreting a statute is "to ascertain and give effect to the intent and purpose of the legislature." *Tommy P. v. Bd. of Cty. Comm'rs*, 97 Wn.2d 385, 391, 645 P.2d 697 (1982); *State v. Hennings*, 129 Wn.2d 512, 522, 919 P.2d 580 (1996). If a statute is plain and unambiguous, its meaning must be primarily derived from the language itself. *Dep't of Transp. v. State Emps.' Ins. Bd.*, 97

[5] The Federal Energy Regulatory Commission has developed a reasoned approach to distinguishing between "petroleum" and "natural gas" for regulatory purposes. Generally speaking, when the Commission uses the term "petroleum," it typically does so interchangeably with "oil." On its "oil" industry webpage, FERC outlines its responsibility in regulating oil pipelines by "[e]stablish[ing] . . . reasonable rates for transporting petroleum and petroleum products by pipeline." FERC, Industries, Oil, http://www.ferc.gov/industries/oil.asp (last visited July 26, 2016). Similarly, in its "Energy Primer" document, a staff report of the Agency's Division of Energy Market Oversight, FERC uses "petroleum" and "crude oil" synonymously. FERC, *Energy Primer* 103-08 (Nov. 2015), http://www.ferc.gov/market-oversight/guide/energy-primer.pdf. The agency refers to "natural gas" separately from "petroleum." *Id.* at 104 ("Unlike natural gas, which is a simple molecule . . ., petroleum as found in the ground is a mixture of hydrocarbons that formed from plants and animals that lived millions of years ago."). Further, in at least one publication, as FERC uses the term, even "petroleum product" does not encompass natural gas. *Id.* at 103 ("[P]etroleum products accounted for 92 percent of all transportation fuels in 2014. The remaining 8 percent consisted of [, inter alia,] *natural gas* . . . ." (emphasis added)).

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Wn.2d 454, 458, 645 P.2d 1076 (1982). The intent behind the language of an enactment becomes relevant only if there is some ambiguity in that language. *City of Spokane v. Taxpayers of City of Spokane*, 111 Wn.2d 91, 98, 758 P.2d 480 (1988). Only if RCW 80.50.020 is ambiguous should EFSEC resort to interpreting or construing the statute. *Morris v. Blaker*, 118 Wn.2d 133, 142, 821 P.2d 482 (1992).

3. RCW 80.50.020 Is Not Ambiguous; the Facility Is Not Subject to EFSEC's Jurisdiction

EFSEC is a "creature of statute," with its jurisdiction over energy facilities strictly and clearly restricted and confined by statute, for the purpose of achieving the laudatory ambitions as set forth in RCW 80.50.010, recognizing the "pressing need for increased energy facilities," and ensuring that the "location and operation" of such facilities "will produce minimal adverse effects." EFSEC has jurisdiction over energy facilities. It has no jurisdiction over the manufacture of industrial chemicals, such as methanol, derived from natural resources. **RCW 80.50.020 is not ambiguous**. The kind of interpretation supplied by Riverkeeper is simply prohibited under Washington's judicial rules of statutory construction. RCW 80.50.020 is applied pursuant to its plain meaning.

A methanol manufacturing and export facility is not an "energy facility" or an "energy plant." RCW 80.50.020(12) provides the following relevant definitions:

> "Energy plant" means the following facilities together with their associated facilities:
>
> . . . .
>
> (c) Facilities which will have the capacity to receive *liquefied natural gas* in the equivalent of more than one hundred million standard cubic feet of natural gas per day, which has been transported over marine waters;

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(d) Facilities which will have the capacity to receive more than an average of fifty thousand barrels per day of *crude or refined petroleum or liquefied petroleum gas* which has been or will be transported over marine waters, except that the provisions of this chapter shall not apply to storage facilities unless occasioned by such new facility construction;

(e) Any underground reservoir for receipt and storage of *natural gas* as defined in RCW 80.40.010 capable of delivering an average of more than one hundred million standard cubic feet of natural gas per day; and

(f) Facilities capable of processing more than twenty-five thousand barrels per day of *petroleum or biofuel* into refined products except where such biofuel production is undertaken at existing industrial facilities.

(Emphasis added.)

In considering Riverkeeper's contentions, the controlling question under RCW 80.50.020 is whether the Facility is an "energy plant" as defined in any of the paragraphs of subsection (12). As NWIW explained to EFSEC in its August 26, 2014 letter, p. 2, the Facility does not fit within any of these definitions.

Riverkeeper has argued that the proposed Project falls under paragraph (d) above for "[f]acilities which will have the capacity to receive more than an average of fifty thousand barrels per day of crude or refined petroleum or liquefied petroleum gas which has been or will be transported over marine waters." There are numerous flaws with Riverkeeper's argument. First, this paragraph applies only to facilities receiving "crude or refined petroleum or liquefied petroleum gas." The paragraph does not mention "natural gas." If the term "petroleum" were used here, as Riverkeeper contends, in some extremely broad sense intended to include natural gas separated from crude oil, there would be no reason to list refined petroleum or liquefied petroleum gas (butane and propane), because they also would be a subset, included in the term

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Telephone (503) 224-3380

"petroleum." Riverkeeper's reading of this paragraph would render those terms superfluous and, therefore, must be rejected.[6]

Second, the statute clearly demonstrates that the legislature knows how to include natural gas when it intends to do so, and to exclude this product from the definitions of jurisdictional facilities, consistent with an unambiguous legislative scheme. Paragraph (c) specifically refers to "liquefied natural gas." Paragraph (e) specifically refers to "natural gas." Neither paragraph applies here because the proposed Project does not involve liquefied natural gas or storage of natural gas. "Where a statute specifically designates the things or classes of things upon which it operates, an inference arises in law that all things or classes of things omitted from it were intentionally omitted by the legislature under the maxim *expressio unius est exclusio alterius*– specific inclusions exclude implication." *Ellensburg Cement Production v. Kittitas Cnty.*, 179 Wn.2d 737, 750, 317 P.3d 1037 (2014).

That paragraph (d) does not include natural gas is also clear by its reference to "fifty thousand barrels per day" as the threshold quantity for jurisdiction. Natural gas is a gas at standard temperature and pressure and is not measured in barrels. Instead, it is measured in cubic feet at standard temperature and pressure or in dekatherms (indicating its energy content). Riverkeeper admits this point, but then proceeds to attempt to convert dekatherms of natural gas to barrels of methane. Riverkeeper Petition, p. 7 n.4. In the process, Riverkeeper ignored the fact that the energy content of natural gas varies. U.S. Dep't of Energy, U.S. Energy Information Administration, Today in Energy, Newly Released Heat Content Data Allow for State-to-State Natural Gas Comparisons (Oct. 14, 2014),

[6] Statutes must not be construed in a manner that renders any portion thereof meaningless or superfluous. *Stone v. Chelan Cty. Sheriff's Dep't*, 110 Wn.2d 806, 810, 756 P.2d 736 (1988).

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Telephone (503) 224-3380

http://www.eia.gov/todayinenergy/detail.cfm?id=18371 ("The heat content of natural gas, or the amount of energy released when a volume of gas is burned, varies according to the extent that gases with higher heat content than methane are included in delivered gas."). Without knowing the source of the natural gas, it would be impossible to know its energy content or to compare it to a volume of crude oil (for which the energy content also varies). Riverkeeper also acknowledged that the methane content of natural gas varies, but dismissed that point, arguing that NWIW will be consuming so much natural gas that this detail will not matter. So even though paragraph (d) states a precise threshold of 50,000 barrels per day (of crude oil, refined oil, and liquefied petroleum gas), Riverkeeper advocates a tortured interpretation that would translate that threshold of products *other than natural gas* into to some vague amount of some large, but unspecified, volume of natural gas.

Lastly, paragraph (d) does not apply because the natural gas to be received by the Project will be transported by pipeline, not over marine water. And the natural gas received by the Project will not be transported anywhere else, over marine waters or otherwise. The natural gas will be reformed to produce methanol.

III. Conclusion

The Washington legislature, in RCW 80.50.020, was clear in its intent that "petroleum" is considered distinct from "natural gas," which is in turn a different product than "liquefied

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STOEL RIVES LLP
ATTORNEYS
760 SW Ninth Avenue, Suite 3000, Portland, OR 97205-2584
Telephone (503) 224-3380

petroleum gas." To seize jurisdiction over a manufacturing facility that is not an "energy facility" as strictly defined by statute would violate EFSEC's carefully crafted legislative authority, with EFSEC greatly overreaching its limited, statutory authority.

DATED: August 1, 2016.

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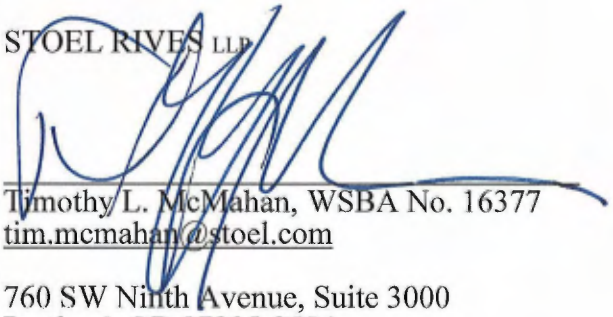

Timothy L. McMahan, WSBA No. 16377
tim.mcmahan@stoel.com

760 SW Ninth Avenue, Suite 3000
Portland, OR 97205-2584

Attorneys for Northwest Innovation Works, Kalama, LLC

Department of Building & Planning
207 Fourth Avenue North
Kelso, WA 98626
TEL (360) 577-3052
FAX (360) 414-5550

www.co.cowlitz.wa.us/buildplan

July 19, 2016

Brian Carrico
210 East 13th St.
Suite 300
Vancouver, WA 98660

RE: Notice of Complete Application

Project Name: NWIW Methanol Manufacturing and Export Facility – 888 Tradewinds Rd.; Parcel #63302 and parcel #s 63304, 63305, 60822, 60831, 63301, and WH2500003

Shoreline File Number: SL 16-0975

Permit Number(s): 16-07-3708 – Planning Clearance
16-07-3709 – Substantial Development Permit
16-07-3710 – Shoreline Conditional Use Permit
16-07-3711 – Floodplain Permit
16-07-3712 – Critical Areas Permit

Dear Mr. Carrico:

This letter certifies that the above referenced application(s), as received on December 4, 2015, along with updates/revisions received on February 25, 2016 as response to Staff's request for more information, has been determined to be complete. This certification of completeness does not preclude Cowlitz County from requesting additional information or studies if new information is required or substantial change of the proposed project occurs.

Processing of your Planning Clearance, Shoreline Substantial Development Permit, Shoreline Conditional Use Permit, Floodplain Permit, and Critical Areas Permit will begin immediately. You will be notified by mail of specific hearing dates and times or if further information is required.

If you have any questions, please contact me at (360) 577-3052.

Sincerely,

Ron Melin
Sr. Environmental Planner

Cc:
Port of Kalama – Tabitha Reeder
Application File

EXHIBIT 1
Page 1 of 1