

## Appendix A

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### Laws, Policies, and Plans Applicable to the Vancouver Energy Distribution Facility Project and EIS

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## Appendix A

# Laws, Policies, and Plans Applicable to the Vancouver Energy Distribution Facility Project and EIS

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## A.1 Introduction

This appendix provides a description of major federal, state, and local laws, regulations, policies, and plans that appear to be applicable to the Vancouver Energy Distribution Facility Project (Project). This list is not necessarily exhaustive as other laws not listed may also be applicable. Certain regulations may require permit issuance and agency consultation prior to implementation of the proposed Project; others may simply provide context for examining potential impacts of the proposed Facility in this Environmental Impact Statement (EIS).

## A.2 Federal Laws, Policies, and Plans

### A.2.1 National Environmental Policy Act

**Responsible Agency/Governing Body.** US Army Corps of Engineers (USACE)

**Description.** The National Environmental Policy Act (NEPA) of 1969, as amended, 42 US Code (USC) 4321 et seq., requires all executive federal agencies to consider the potential environmental impacts of a proposed federal action before making a decision. Federal actions include decisions by a federal agency to perform work, authorize federal funding, issue a permit, or approve a land management plan. For those actions that are not categorically excluded (predetermined to not individually or cumulatively have a significant effect on the human environment) from further analysis, an environmental assessment or environmental impact statement must be prepared to inform the agency's decision-making process and to determine whether any significant impacts could result from implementation of the proposed action. "Significance" is defined by the Council on Environmental Quality (CEQ) regulation 1508.27 and is evaluated based on this criteria.

**Applicability.** The Applicant submitted an application to the USACE on February 12, 2014, to replace decking, mooring hardware, and fender systems; fill hollow steel pilings; remove portions of overwater structures; and install oil transfer and return lines, a jib crane, manifolds, and related facilities on an existing pier. These activities would require USACE authorization under Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act. Prior to determining whether to authorize the Section 404 Permit and Section 10 Permit, USACE must comply with NEPA by analyzing the environmental impacts of these specific activities.

**EIS Resource Area(s).** All

### A.2.2 Comprehensive Environmental Response, Compensation, and Liability Act

**Responsible Agency/Governing Body.** US Environmental Protection Agency (EPA) and Washington State Department of Ecology (Ecology)

**Description.** The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, 42 USC 9601, et seq., establishes requirements for closed and abandoned hazardous waste sites. The statute imposes "joint" and "several" liability (meaning that each party that contributes to a site's pollution is liable as if they alone polluted that site) on current and historical landowners and facility operators who release contaminants to the environment. The EPA prioritizes site cleanup activities

on a nationwide basis to protect public health and the environment. In Washington, site remediation activities under CERCLA are based on the Model Toxics Control Act (Washington Administrative Code [WAC] Chapter 173-340).

**Applicability.** The Port of Vancouver (Port), including portions of the proposed Facility site, has areas that have been remediated pursuant to CERCLA (e.g., the unloading and office area [Area 200]/Terminal 5, the former Evergreen-Alcoa site) and has deed restrictions required by Ecology's consent decrees. Disturbance of existing site contamination during proposed Facility construction would require the Applicant to comply with the requirements of the state-implemented consent decrees (see Section 3.3, Ecology/Alcoa Consent Decree, of this appendix).

**EIS Resource Area(s).** Earth Resources, Water Resources, Environmental Health

### **A.2.3 Clean Water Act**

**Responsible Agency/Governing Body.** EPA, US Coast Guard (USCG), Ecology, Energy Facility Site Evaluation Council (EFSEC), USACE

**Description.** The CWA, 33 USC 1251 et seq., regulates discharges of pollutants into waters of the United States and regulates water quality standards. The Oil Pollution Act of 1990 (OPA 90) expanded the CWA's existing liability provisions to specifically address the prevention, response, and associated liabilities for oil pollution of waterways and coastlines of the United States. The USCG performs formal data and vessel tracking, inspection, implementation of a safety management system, and enforcement pursuant to OPA 90.

**Applicability.** The proposed Facility would be subject to the provisions of the CWA, including:

- Section 401 Certification
- Section 402 National Pollutant Discharge Elimination System (NPDES)
- Section 404 Permits to Discharge Dredged or Fill Material
- Section 311(J) Oil and Hazardous Substances Liability
- Section 307(b) Toxic and Pretreatment Effluent Standards

CWA Section 401 requires certification from the state in which a discharge originates that any discharge to navigable waters complies with applicable water quality standards and/or effluent limitations prior to the issuance of the permit.<sup>1</sup> CWA Section 402 authorizes the NPDES permit program, setting specific limits for discharge of pollutants, and establishing monitoring, reporting, and special conditions. CWA Section 311(J) establishes oil spill prevention and control requirements for vessels and facilities and authorizes regulations establishing procedures, methods, equipment, and other requirements. Section 307(b) of the CWA, federal pretreatment regulations (40 Code of Federal Regulations [CFR] Part 403), establish the responsibilities of federal, state, and local government, industry, and the public to implement national pretreatment standards.

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<sup>1</sup> The Proposed Action only would not be subject to CWA Section 404. Authorization from the USACE under CWA Section 404 is required when dredge or fill material is discharged into waters of the United States, including wetlands. The Proposed Action would not affect wetland areas or cause any fill to a water of the United States; Section 404 permitting is therefore not applicable.



**EIS Resource Area(s).** Water Resources, Aquatic Species, Environmental Health, Land and Shoreline Use, Public Services and Utilities

**A.2.3.1 Section 401 Certification**

Ecology is designated by EPA as the state water pollution control agency, responsible for implementing all federal and state water pollution control laws and regulations. EFSEC has been delegated authority by the EPA to issue water pollution control permits for facilities under EFSEC's jurisdiction. Ecology issued a water quality certification for Port activities (e.g., maintenance dredging) authorized by the USACE (Nationwide Permit [NWP]-2007-916-1), subject to compliance with all conditions (Ecology Order #5984). These conditions include meeting state water quality standards (WAC 173-201), protecting special aquatic resources, and completing mitigation measures for impacts.

The proposed Project's USACE individual federal Rivers and Harbors Act Section 10 permit would require State of Washington CWA Section 401 certification, administered by EFSEC with technical support from Ecology.

**A.2.3.2 Section 402 National Pollutant Discharge Elimination System**

The NPDES permit program is administered by the EPA, but the EPA can authorize states to assume administration and enforcement. EFSEC is delegated the administration of the NPDES program under the CWA for facilities under its jurisdiction and has adopted its own NPDES program (WAC 463-76). The proposed Project's construction activities and industrial operations require NPDES permits.

**NPDES Construction Stormwater Permit**

An NPDES Construction Stormwater Permit is required for any construction disturbing more than 1 acre of land and discharges of stormwater to surface waters of the state. EFSEC has determined that the proposed Facility would require an individual NPDES Construction Stormwater Permit. The permit requires preparation of a SWPPP (Appendix C.3), implementation of control measures or best management practices (BMPs) to reduce the potential impacts to water quality during construction, and monitoring and reporting of stormwater discharges from the site during construction. Parameters monitored during construction would include turbidity, sediment, pH, other known contaminants, and potentially total residual chlorine because disinfection may occur during hydrostatic testing of tanks and lines.

**NPDES Industrial Stormwater Permit**

An NPDES Industrial Stormwater Permit is required for stormwater discharges from industrial facilities. While wholesale petroleum bulk stations and terminals (Standard Industrial Classification Code 5171) are listed in Washington's general permit for industrial stormwater discharges, EFSEC has determined an individual permit is required for the Vancouver Energy Distribution Terminal. Under such a permit, stormwater from the proposed Facility would discharge to the Port's stormwater system, which in turn discharges to the Columbia River through existing outfalls. Since stormwater from the site would be discharged through human-made conveyances (rather than naturally occurring streams), the proposed Project is exempt from a flow control requirement (as specified in Appendix I-E of the Stormwater Manual for Western Washington). Stormwater discharges from the proposed Facility would be treated to water quality standards in accordance with the discharge requirements of the Port and the Port's NPDES Municipal Phase II Stormwater General Permit. The individual NPDES permit requires the establishment and maintenance of BMPs and inspection and monitoring practices to protect water quality. It also establishes specific discharge limits for pollutants in the stormwater discharge. It is anticipated that effluent limits would be established for oil and grease, benzene, ethylbenzene, naphthalene, toluene, zinc, copper, pH, total suspended solids, and turbidity. Stormwater treatment technologies would be

implemented to treat and monitor stormwater quality in accordance with the required NPDES stormwater permits.

### **NPDES Vessel General Permit**

The EPA issued a VGP pursuant to Section 402 that authorizes, on a nationwide basis, discharges incidental to the normal operation of nonmilitary and nonrecreational vessels greater than or equal to 79 feet in length. The current 2013 Vessel General Permit contains stringent effluent limits for oil-to-sea interfaces and addresses releases of lubricants from vessels.

#### **A.2.3.3 Section 404 Permits to Discharge Dredged or Fill Material**

The proposed Facility would require seismic and safety upgrades to existing piers in the Columbia River. This construction would include fill material from discharged concrete to be built into existing steel piles, entering US waters and triggering Section 404(b)(1) of the CWA. Should a permit be issued for the above discharge, USACE would require further information regarding the fill material prior to construction.

#### **A.2.3.4 Section 311(J) Oil and Hazardous Substances Liability**

The following requirements would apply to the proposed Project:

- 40 CFR 110, *Discharge of Oil* (“Sheen Rule”), requires reporting of spills to the National Response Center.
- 40 CFR 112, *Oil Pollution Prevention*, is administered by the EPA. Subpart A and Subsection 112.8 of Subpart B address the requirements for a Spill Prevention Contingency and Countermeasure (SPCC) Plan for a non-transportation facility.
- 33 CFR 154, *Facilities Transferring Oil or Other Hazardous Materials in Bulk*, applies to facilities capable of transferring oil to or from a vessel with a capacity of 250 barrels (bbl) or more. The USCG administers this regulation.
- 33 CFR 156, *Oil and Hazardous Material Transfer Operations*, applies to the transfer of oil or hazardous material on navigable waters or in the contiguous zone of the United States to, from, or within each vessel having a capacity of 250 bbl or more. The USCG administers this regulation.

#### **A.2.3.5 Section 307(b) Toxic and Pretreatment Effluent Standards**

The proposed Facility would have to be in compliance with national pretreatment standards to control pollutants that pass through or interfere with treatment processes in publicly owned Waste Water Treatment Plants (WWTPs), such as the City of Vancouver’s (City’s) WWTP, WA0024350.

### **A.2.4 Rivers and Harbors Act Section 10**

**Responsible Agency/Governing Body.** USACE

**Description.** Compliance with Section 10 of the Rivers and Harbors Act (33 USC 401 et seq., 33 CFR 322) is required when work occurs in or over a navigable waterway of the United States, or for work that affects the course, location, condition, or capacity of such waters. The USACE evaluates a variety of elements in making a permitting decision. Elements include public interest, effects on wetlands, fish and wildlife, water quality, historical, cultural, scenic, and recreational values, property ownership, floodplains, water supply and conservation, and navigability concerns.

**Applicability.** The USACE administers this permit program and would process the proposed Project’s modifications to Berths 13 and 14 at the Port under an individual permit review. The Applicant submitted an application to the USACE on February 12, 2014, describing seismic and safety upgrades, installation

of concrete anchors to existing steel piles, minor configuration modifications to existing mooring facilities, and installation of a transfer pipeline on one of the mooring facility piers (Berth 14) (USACE 2015). As of September 2015, the permit application is still under review.

Ongoing maintenance dredging by the Port, including deepening of Berths 13 and 14 at Terminal 4 to an authorized depth of -43+2 feet (Columbia River datum), within the Port's maximum dredged volume of 50,000 cubic yards annually, is permitted under USACE NWP-2007-916-1 (and certified by the state).

**EIS Resource Area(s).** Water Resources, Terrestrial Vegetation, Terrestrial Wildlife, Aquatic Resources, Land and Shoreline Use, Visual Resources, Recreation, Historic and Cultural Resources

#### **A.2.5 Safe Drinking Water Act**

**Responsible Agency/Governing Body.** EPA

**Description.** The Safe Drinking Water Act (SDWA) of 1974, as amended in 1986 and 1996, is the main federal law ensuring the quality of drinking water. Under the SDWA, EPA sets health-based standards for approximately 90 natural and human-introduced contaminants and indicators in drinking water and oversees the implementation of standards by states, tribes, localities, and water suppliers. The SDWA does not regulate private wells serving fewer than 25 individuals. In recent years, EPA has increased its emphasis on considering groups of contaminants, developing new technologies, partnering for better monitoring data exchange, and increasing source protection efforts. The 1996 SDWA amendments require all states to establish and implement a Source Water Assessment Program that delineates source protection areas, inventories potential contaminant sites, and determines susceptibility of sources to contamination. The national Wellhead Protection Program established under Section 1438 of SDWA specifies that certain activities be incorporated into state Wellhead Protection Programs and approved by EPA for implementation.

The Sole Source Aquifer Protection Program is authorized in Section 1424(e) of the SDWA. EPA defines a sole-source or principal-source aquifer as an aquifer that supplies at least 50 percent of the drinking water consumed in the area overlying the aquifer. These areas may have no alternative drinking water sources that physically, legally, or economically supply all those who depend on the aquifer for drinking water. Projects within the aquifer boundary and source area of a sole-source aquifer and that have federal funding are subject to specific review by EPA under the Sole Source Aquifer Protection Program. However, the program has no statutory authority to review projects that are not receiving federal funding.

**Applicability.** The EPA has designated 13 sole-source aquifers in Region 10 (in Idaho, Oregon, and Washington). There are sole-source aquifers in the vicinity of the proposed Project area or crossed by the rail and vessel corridors.

**EIS Resource Area(s).** Water Resources, Environmental Health, Public Services and Utilities

#### **A.2.6 Executive Order 11988 – Floodplain Management**

**Responsible Agency/Governing Body.** Federal Emergency Management Agency (FEMA)

**Description.** Executive Order 11988 of May 24, 1977 (42 *Federal Register* 26971), requires federal agencies to provide leadership and take actions to reduce risk of flood loss, minimize flood impacts on humans, and restore and preserve the natural and beneficial values of floodplains, in their own programs and activities as well as in making determinations or evaluations of applications for licenses, permits, loans, or grants.

**Applicability.** This provides context for decision makers and for examining potential impacts of the proposed Facility in this EIS.

**EIS Resource Area(s).** Water Resources

### **A.2.7 Executive Order 11990 – Protection of Wetlands**

**Responsible Agency/Governing Body.** EPA

**Description.** Executive Order 11990 of May 24, 1977 (42 Federal Register 26961) requires federal agencies provide leadership and take actions to minimize the destruction, loss or degradation of wetlands and to preserve and enhance the natural and beneficial values of wetlands, in conducting their own programs and activities as well as in making determinations or evaluations of land and water planning, regulation, and licensing.

**Applicability.** This provides context for decision makers and for examining potential impacts of the proposed Facility in this EIS.

**EIS Resource Area(s).** Water Resources, Terrestrial Vegetation, Aquatic Resources

### **A.2.8 Clean Air Act**

**Responsible Agency/Governing Body.** EPA and EFSEC

**Description.** The federal Clean Air Act (CAA; 42 USC 7401 et seq.) establishes the national framework under which industrial emissions sources are required to obtain permits for the emissions of regulated air pollutants. The federal permitting programs applicable to the proposed Facility are described below, as are programs delegated by the EPA to EFSEC for facilities under EFSEC’s jurisdiction.

#### ***A.2.8.1 Ambient Air Quality Standards***

Air quality is defined by the ambient (i.e., surrounding) air concentrations of specific pollutants determined by the EPA to be of concern to the health and welfare of the general public and the environment and that are widespread across the United States. These pollutants, called “criteria pollutants,” include carbon monoxide (CO), sulfur dioxide (SO<sub>2</sub>), nitrogen dioxide (NO<sub>2</sub>), ozone, suspended particulate matter less than or equal to 10 microns in diameter (PM<sub>10</sub>), fine particulate matter less than or equal to 2.5 microns in diameter (PM<sub>2.5</sub>), and lead.

These pollutants are subject to both primary and secondary National Ambient Air Quality Standards (NAAQS). “Primary standards” are intended to provide public health protection, particularly for “sensitive” populations such as asthmatics, children, and the elderly. “Secondary standards” are intended to provide “public welfare” protection, including protection against decreased visibility and damage to animals, crops, vegetation, and buildings. The State of Washington has adopted its own Ambient Air Quality Standards (WAAQS) for certain pollutants. Both the NAAQS and WAAQS are shown in Table A-1. Where both NAAQS and WAAQS apply, the most stringent standards prevail.

**Table A-1 National and Washington Ambient Air Quality Standards**

Pollutant	Averaging Time	National Standards		Washington Standards
		Primary	Secondary	
PM <sub>10</sub>	24-hour	150 µg/m <sup>3</sup>	150 µg/m <sup>3</sup>	Same as NAAQS
PM <sub>2.5</sub>	Annual (Arithmetic Mean)	12 µg/m <sup>3</sup>	15 µg/m <sup>3</sup>	Same as NAAQS
	24-hour	35 µg/m <sup>3</sup>		Same as NAAQS
SO <sub>2</sub>	Annual (Arithmetic Mean)	0.030 ppm	--	0.02 ppm
	24-hour	0.14 ppm	--	Same as NAAQS
	3-hour	--	0.5 ppm	Same as NAAQS
	1-hour	75 ppb	--	Same as NAAQS
NO <sub>2</sub>	Annual	--	53 ppb	Same as NAAQS
	1-hour	100 ppb	--	Same as NAAQS
Ozone	8-hour	0.075 ppm	0.075 ppm	Same as NAAQS
CO	8-hour	9 ppm	--	Same as NAAQS
	1-hour	35 ppm	--	Same as NAAQS
Lead	Rolling 3-month average	0.15 µg/m <sup>3</sup>	0.15 µg/m <sup>3</sup>	Same as NAAQS

Sources: EPA 2014, Ecology 2013

ppb = part(s) per billion, ppm = part(s) per million, µg/m<sup>3</sup> = microgram(s) per cubic meter

The EPA determines air quality attainment status based on whether the air quality in the area meets (attains) the NAAQS. Areas that violate NAAQS are designated as “nonattainment areas” for the relevant pollutants. Areas with insufficient data are designated as “attainment/unclassified areas” and are treated as attainment areas under the CAA. Areas that were previously designated nonattainment and have demonstrated compliance with a NAAQS are designated “maintenance areas” for 20 years after the effective date of attainment, assuming they remain in compliance with the standard.

**Applicability.** The proposed Facility would be located in a region considered to be in attainment for all criteria pollutants. However, Vancouver has been designated as a CO maintenance area since 1996 (EPA 1996a). The State of Washington has an EPA-approved State Implementation Plan (SIP) that identifies how the state will maintain compliance with the CO ambient air quality standard.

**A.2.8.2 General Conformity Rule**

Federal funding actions or other approvals in nonattainment and maintenance areas are subject to General Conformity Rule (GCR) requirements in 40 CFR Part 93, Subpart B. A General Conformity Determination is required when the total direct and indirect net emissions of the affected pollutants (or their precursors) exceed specified thresholds, known as de minimis thresholds. The GCR ensures federal actions conform to the SIP and NAAQS attainment plans. Although the GCR does not specifically apply to nonfederal organizations, many federal agencies require applicants for grants, permits, and approvals to provide the technical documentation and demonstrations necessary for the agencies to make the conformity determination.

**Applicability.** The GCR, which is intended to prevent new air quality problems or delays in achieving attainment, applies in the study area for the proposed Facility because it is considered a maintenance area for CO. The portions of a project subject to other federal air quality permitting (e.g., New Source Review

[NSR], Prevention of Significant Deterioration) are considered under such other rules and are not evaluated under GCR.

### **A.2.8.3 New Source Performance Standards**

EPA has established performance standards for a number of air pollution sources in 40 CFR 60. These New Source Performance Standards (NSPS) represent a minimum level of control that is required for a new source.

**Applicability.** The proposed Facility would be subject to the following NSPS:

- 40 CFR 60, Subpart Dc, *Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units*. The provisions of Subpart Dc apply to steam-generating units with a maximum design heat input capacity less than 100 million British thermal units (MMBtu) per hour and greater than 10 MMBtu per hour. The boilers associated with the proposed Facility fall within this capacity range. The particulate matter and SO<sub>2</sub> emission standards defined in Subpart Dc do not apply to units that are solely fueled by natural gas. Therefore, only the record keeping and reporting requirements of this subpart are applicable. The provisions of this subpart require that the Applicant maintain a record of the volume of natural gas burned in each boiler during each calendar month.
- 40 CFR 60, Subpart Kb, *Standards of Performance for Volatile Organic Liquid Storage Vessels*. The provisions of Subpart Kb apply to the crude oil storage tanks associated with the proposed Facility. Subpart Kb regulates volatile organic compound emissions and establishes controls based on the vapor pressure of the stored liquid. Because the proposed Facility would receive, store, and load a range of crude oils, some of which may have true vapor pressures within the applicable ranges addressed by Subpart Kb, it is assumed that Subpart Kb would apply to the proposed Facility tanks. Subpart Kb identifies three control options. For the proposed Facility, the Applicant would incorporate the option identified in 40 CFR 60.112b(a)(1)—a fixed roof in combination with an internal floating roof that floats on the liquid surface. A series of regulations for seals and closure devices related to roof contact must be followed.
- 40 CFR 60, Subpart IIII, *Standards of Performance for Stationary Compression Ignition Internal Combustion Engines*. The provisions of Subpart IIII apply to the emergency diesel fire water pump engines associated with the proposed Facility. Subpart IIII regulates non-methane hydrocarbon plus nitrogen oxides and particulate matter and requires that the engine manufacturer certify that the engine meets the standards in the rule; emission testing by the Applicant is not required. Subpart IIII limits hours of non-emergency operation, mandates the use of ultra-low sulfur diesel and requires the Applicant to keep records of the time of operation of the engine and the reason the engine was in operation during that time. Initial notification of installation is not required for emergency engines subject to Subpart IIII.
- 40 CFR 60, Subpart A, *General Provisions*. Subpart A identifies monitoring, record-keeping, and notification requirements that apply generally to all NSPS subparts. Subpart A specifies that any performance (emissions) tests required by an NSPS must be conducted within 60 days of achieving maximum production rate at which the source will be operated, but not later than 180 days after initial startup. Consistent with NSPS requirements, the Applicant would notify EFSEC and EPA of commencement of construction of purpose-built facilities, the initial start-up date, the actual start-up date, and performance tests. The Applicant would also maintain records of start-ups and shutdowns, malfunctions of control equipment, and periods of excess emissions if they occur.

#### **A.2.8.4 Hazardous Air Pollutants**

In addition to the ambient air quality standards for criteria pollutants, hazardous air pollutants (HAPs) are other pollutants of concern that are regulated under Section 112(b) of the 1990 CAA Amendments. The National Emission Standards for Hazardous Air Pollutants (NESHAPs) regulate HAP emissions from stationary sources (40 CFR Parts 61 and 63).

HAPs emitted from mobile sources are called Mobile Source Air Toxics (MSATs); they are compounds emitted from highway vehicles and nonroad equipment that are known or suspected to cause cancer or have other serious health and environmental effects. In 2001, EPA issued its first MSAT Rule, which identified 21 compounds as being HAPs that required regulation. Six of these MSAT compounds were identified as having the greatest influence on health—formaldehyde, acetaldehyde, benzene, 1,3-butadiene, acrolein, and diesel particulate matter (DPM). In February 2007, EPA issued a second MSAT Rule, which generally supported the findings in the first rule and provided additional recommendations of compounds having the greatest impact on health. The rule also identified several engine emission certification standards that must be implemented. Unlike the criteria pollutants, no NAAQS exist for formaldehyde, DPM, and other HAPs. The primary control methodologies for MSATs involve reducing their content in fuel, and increasing engine efficiency to reduce the volume of pollutants generated during combustion.

**Applicability.** The proposed Facility would be an “area” source of HAP emissions as it would have a potential to emit HAPs of less than 25 tons per year, with no single HAP emissions exceeding 10 tons per year. The following NESHAPs would apply:

- 40 CFR 63, Subpart Y, *National Emission Standards for Hazardous Air Pollutants for Marine Tank Vessel Loading Operations*. The emission standard provisions of Subpart Y apply to existing and new marine terminals that are major sources of HAPs or are associated with a major source of HAPs. As noted above, the proposed Facility would be an area source of HAPs, and would be subject to the emission estimation (40 CFR 63.565(l)) and recordkeeping (40 CFR 63.567(j)(4)) requirements, and must meet the submerged fill standards (40 CFR 153.282).
- 40 CFR 63, Subpart ZZZZ, *National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines*. The provisions of Subpart ZZZZ apply to stationary reciprocating internal combustion engines located at major and area sources of HAP emissions. A new stationary reciprocating internal combustion engines located at an area source must meet the requirements of Subpart ZZZZ by meeting the requirements of NSPS Subpart IIII for compression ignition engines. No further requirements apply for such engines under Subpart ZZZZ.
- 40 CFR 61 and 63, Subpart A, *General Provisions*. Subpart A establishes general requirements for reporting, testing, monitoring, and recordkeeping for any major source facility. The Applicant of the proposed Facility must send notifications to EFSEC and EPA of anticipated and actual start-up dates as defined in 40 CFR 63.9 and submit reports summarizing operations, emissions, and compliance with regulations and limits as specified in the standard.

**EIS Resource Area(s).** Air Quality, Environmental Health

#### **A.2.9 Mandatory Reporting of Greenhouse Gas Rule**

**Responsible Agency/Governing Body.** EPA

**Description.** Greenhouse gases (GHGs) are gases that trap heat in the atmosphere. On December 15, 2009, EPA found that GHG emissions pose a threat to public health and welfare (EPA 2009a).

Subsequent to this finding, EPA issued the Mandatory Reporting of Greenhouse Gas Rule. This rule, codified in 40 CFR 98, is the first comprehensive national system for reporting emissions of carbon dioxide (CO<sub>2</sub>) and other GHGs produced by major sources in the United States. The purpose of the rule is to collect comprehensive and accurate data about the production of GHGs to confront climate change.

The gases covered by the rule are CO<sub>2</sub>, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and other fluorinated gases. Because CO<sub>2</sub> is the reference gas for climate change, measures of non-CO<sub>2</sub> GHGs are converted into carbon dioxide equivalent (CO<sub>2</sub>e). CO<sub>2</sub>e is the number of metric tons of CO<sub>2</sub> emissions with the same global warming potential (GWP) as 1 metric ton of another GHG. GWPs are calculated as a measure of the total energy that a gas absorbs over a particular period of time (usually 100 years), compared to CO<sub>2</sub> (EPA 2013a). As an example, methane, which is a common GHG, is widely represented as having a 100-year GWP of 25.

The reporting requirements apply to suppliers of fossil fuel and industrial chemicals, manufacturers of certain motor vehicles and engines, and sources with emissions greater than 25,000 metric tons per year, in terms of CO<sub>2</sub>e (about the amount of GHG emissions emitted from 5,200 passenger vehicles over the course of a year). Sources must report under the GHG rule if they are in a source category listed in 40 CFR 98.2(a)(1) or (a)(2); or if the source is not a source category listed in 40 CFR 98.2(a)(1) or (a)(2), but has an aggregate maximum rated heat input capacity greater than 30 MMBtu per hour and emits greater than 25,000 metric tons per year of CO<sub>2</sub>e from all stationary fuel combustion sources.

**Applicability.** The proposed Facility is not a source category listed in 40 CFR 98.2(a)(1) or (a)(2), but does have an aggregate maximum rated heat input capacity greater than 30 MMBtu per hour. Consequently, GHG reporting would apply if the proposed Facility emits greater than 25,000 metric tons per year of CO<sub>2</sub>e (based on actual emission estimates).

**EIS Resource Area(s).** Air Quality, Environmental Health

#### **A.2.10 Endangered Species Act**

**Responsible Agency/Governing Body.** US Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS)

**Description.** Congress passed the Endangered Species Act (ESA) on December 28, 1973, recognizing that the natural heritage of the United States was of “aesthetic, ecological, educational, recreational, and scientific value to our Nation and its people.” The listing of a species as threatened or endangered under the ESA makes it illegal to “take” (harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to do these things) that species. The ESA (16 USC 1531-1544) provides for the conservation and management of species that are determined to be threatened or endangered, as well as the conservation of habitats (designated critical habitat)<sup>2</sup> on which these species depend. *Endangered species* are species that are in danger of extinction throughout all or a significant portion of their range. *Threatened species* are species that are likely to become endangered throughout all or a significant portion of their range. A *proposed species* is any species that is proposed in the *Federal Register* for listing as a threatened or endangered species under the ESA. A *candidate species* is any species on which the USFWS has sufficient biological status and threats information to propose the species for listing as endangered or

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2 *Critical habitat* is defined as specific areas within the geographical area occupied by a species at the time of listing, if they contain physical or biological features essential to conservation and those features may require special management considerations or protection, and specific areas outside the geographical area occupied by the species if the agency determines that the area itself is essential for conservation ([NMFS 2014](#)).



threatened under the ESA, but whose proposed listing regulation is precluded by other higher priority listing activities. Candidate species receive no statutory protection under the ESA.

ESA Section 7 requires federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of any endangered, threatened, or proposed species or result in the destruction or adverse modification of their designated critical habitat. ESA Section 7 requires that federal agencies consult with USFWS and/or NMFS when actions they authorize may affect listed species or critical habitat. USFWS addresses actions affecting plants, birds, terrestrial animals, marine mammals (e.g., sea otters, polar bears, walruses), plants, amphibians, invertebrates, and freshwater fish, while NMFS addresses actions affecting marine mammals (e.g., dolphins, porpoises, whales, seals, sea lions), marine reptiles, and marine and anadromous fishes.

**Applicability.** A BE has been prepared and submitted to the USACE as the federal lead for consultation with USFWS and NMFS for the proposed Project (BergerABAM 2014a). The USFWS and NMFS are expected to issue biological opinions that document their conclusions regarding the effects of the proposed Project on ESA-listed species and critical habitat based on the BE.

**EIS Resource Area(s).** Terrestrial Vegetation, Terrestrial Wildlife, Aquatic Species

#### **A.2.11 Migratory Bird Treaty Act**

**Responsible Agency/Governing Body.** USFWS

**Description.** The Migratory Bird Treaty Act (MBTA; 16 USC 703-712) prohibits the killing, possessing, or trading of migratory birds, bird parts, eggs, and nests, except in accordance with regulations prescribed by the Secretary of the Interior. The list of birds protected by the MBTA includes migratory birds native to the United States or its territories (78 *Federal Register* 65844). The MBTA does not protect birds whose occurrences in the United States are the result of intentional or unintentional human-assisted introduction(s). To further the purpose of the MBTA, Executive Order 13186 directs federal agencies to work with the USFWS to promote the conservation of migratory bird populations (66 *Federal Register* 3853).

**Applicability.** This provides context for decision makers and for examining potential impacts of the proposed Facility in this EIS.

**EIS Resource Area(s).** Terrestrial Wildlife

#### **A.2.12 Bald and Golden Eagle Protection Act**

**Responsible Agency/Governing Body.** USFWS

**Description.** This act (16 USC 668-668c) prohibits the intentional or unintentional harm or disturbance of bald and golden eagles, including their nests or eggs, without a permit issued by the USFWS. Disturbance can include human activity or noise that results in injury to an eagle; interferes with normal breeding, feeding, or sheltering behavior; or causes nest abandonment. Habitat alterations that may occur when nests are unoccupied and result in abandonment of a previously used nest upon the eagle's return are also included and would require a permit. In general, habitat alteration or potentially disturbing construction activities within 660 feet of an active eagle nest or loud noises within 0.5 mile of an active eagle nest during the nesting period or near a communal roost site should be evaluated for the requirement of an eagle take permit.

**Applicability.** This provides context for decision makers and for examining potential impacts of the proposed Facility in this EIS.

**EIS Resource Area(s).** Terrestrial Wildlife

### **A.2.13 Magnuson-Stevens Fishery Conservation and Management Act**

**Responsible Agency/Governing Body.** NMFS

**Description.** The Magnuson-Stevens Act (16 USC 1801 et seq.) is the primary law governing marine fisheries management in US federal waters. This act was first enacted in 1976 and amended most recently in 2006. The Magnuson-Stevens Act established a 200-mile fishery conservation zone and explained the role of regional fishery management councils and described their functions and operating procedures. The act includes national standards for management and outlined the contents of fishery management plans. It is complemented by other federal and state laws, including the Marine Mammal Protection Act (MMPA), the ESA, the Coastal Zone Management Act, and the National Marine Sanctuaries Act.

Under Magnuson-Stevens Act Section 305(b)(2), as amended by the Sustainable Fisheries Act on October 11, 1996, federal agencies are required to consult with the Secretary of Commerce on any actions that may adversely affect essential fish habitat (EFH). EFH descriptions were approved by NMFS on September 27, 2000, for West Coast salmon fisheries; on June 10, 1999, for northern anchovy/coastal pelagics; and on March 3, 1999, for Pacific coast groundfish. The EFH regulations also direct the regional fishery management councils to consider a second, more limited designation for each species: habitat areas of particular concern (HAPCs). Designated HAPCs are not afforded any additional regulatory protection under the Magnuson-Stevens Act; however, federal projects with potential adverse impacts on HAPCs are more carefully scrutinized during the consultation process. Currently, only Amendment 14 to the Pacific Salmon Fishery Management Plan has addressed the HAPC for Chinook, coho, and pink salmon.

**Applicability.** This provides context for decision makers and for examining potential impacts of the proposed Facility in this EIS.

**EIS Resource Area(s).** Aquatic Species

### **A.2.14 Marine Mammal Protection Act**

**Responsible Agency/Governing Body.** NMFS and USFWS

**Description.** The MMPA was enacted in 1972 and amended in 1994. The MMPA prohibits, with certain exceptions, “take of marine mammals in US waters and by US citizens on the high seas, and importation of marine mammals and marine mammal products into the US.” Take is defined under the MMPA as “act of hunting, killing, capture, and/or harassment of any marine mammal; or, the attempt at such.” The MMPA defines harassment as “any act of pursuit, torment, or annoyance which has the potential to either: (a) injure a marine mammal in the wild, or (b) disturb a marine mammal by causing disruption of behavioral patterns, which includes, but is not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.” The USFWS and NMFS share jurisdiction over the MMPA.

**Applicability.** On May 1, 2015, EFSEC received a draft Marine Mammal Monitoring Plan from the Applicant that is currently under review by the Washington Department of Fish and Wildlife (WDFW).

**EIS Resource Area(s).** Aquatic Species

### **A.2.15 Noise Control Act of 1972 and Quiet Communities Act of 1978**

**Responsible Agency/Governing Body.** EPA

**Description.** The US Congress enacted the Noise Control Act of 1972 for the purpose of protecting Americans from harmful noise that could jeopardize their health and welfare. In the Noise Control Act, Congress found that “transportation vehicles and equipment, machinery, appliances, and other products in commerce” were major sources of noise. Congress further acknowledged in this act that noise control lies with state and local government, but that federal action is “essential” to deal with major noise sources. Congress subsequently enacted the Quiet Communities Act of 1978 for the purpose of promoting the development of effective state and local noise control programs, to provide funds for noise research, and to produce and disseminate educational materials to the public on the harmful effects of noise and ways to effectively control it. Under the Noise Control Act and the Quiet Communities Act, the EPA has implemented federal regulations covering standards for major sources of noise such as construction equipment, rail carriers and motor carriers, or transport equipment (EPA 2013b). However, no federal regulations govern noise in local communities (EPA 2013c); this responsibility is left to state and local authorities.

In 1974, the EPA published *Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety*. This document identified outdoor and indoor noise levels to protect public health and welfare. An equivalent sound level (Leq(24)) of 70 A-weighted decibels (dBA) was identified as the level of environmental noise that would not result in any measurable hearing loss over a lifetime. A day-night sound level (Ldn) of 55 dBA outdoors and an Ldn of 45 dBA indoors were identified as noise thresholds that would prevent activity interference or annoyance. These levels are not “peak” levels but are 24-hour averages over several years. Occasional high levels of noise may occur. An Ldn of 55 dBA is equivalent to a continuous noise level of 48.6 dBA (EPA 1974).

Guidance on safe noise levels, which can be used to assess impacts of a project to public health and welfare, is available from EPA (1974, 1978). Table A-2 shows outdoor and indoor noise levels identified by EPA to protect public health and welfare, expressed as Leq(24) or Ldn (based on the dBA over a 24-hour period). Note that the acceptable noise levels listed in the table are not “peak” levels but are 24-hour averages over several years. These values are not standards, but are levels where the general population would not be expected to be at risk from the identified effects of the noise (EPA 1978).

**Table A-2      Yearly Values that Protect Public Health and Welfare with a Margin of Safety**

Effect	Safety Level	Area
Hearing Loss	Leq(24) ≤ 70 dBA	All areas
Outdoor Activity Interference and Annoyance	Ldn(24) ≤ 55 dBA	Outdoors in residential areas and farms, other outdoor areas where people spend widely varying amounts of time, and other places in which quietude is a basis for use.
	Leq(24) ≤ 55 dBA	Outdoor areas where people spend limited amounts of time, such as school yard, playgrounds, etc.
Indoor Activity Interference and Annoyance	Ldn ≤ 45 dBA	Indoor residential areas
	Leq(24) ≤ 45 dBA	Other indoor areas with human activities, such as schools, etc.

Source: EPA 1978

dBA = A-weighted decibel, Ldn = day-night sound level, expressed in dBA

**Applicability.** This provides context for decision makers and for examining potential impacts of the proposed Facility in this EIS.

**EIS Resource Area(s).** Noise

**A.2.16 Ground Vibration Guidelines**

**Responsible Agency/Governing Body.** Federal Transit Administration (FTA)

**Description.** The FTA has published guidelines for assessing the impacts of ground-borne vibration associated with construction of rail projects. These guidelines may be applied to other types of projects in assessing their vibration impacts. The FTA-recommended vibration standards are expressed in terms of the vibration velocity level (in vibration velocity decibels [VdBs]). VdB is calculated from the peak particle velocity (PPV)<sup>3</sup> measured from ground-borne vibration and expressed in inches per second. Table A-3 shows acceptable levels of ground-borne vibration velocity for certain land use categories with respect to human annoyance, and Table A-4 shows acceptable levels with respect to building damage.

**Table A-3 Acceptable Ground-Borne Vibration Levels with Respect to Human Annoyance**

Land Use Category	Examples	Acceptable Ground-Borne Vibration Velocity Levels (VdB)		
		Frequent Events <sup>a</sup>	Occasional Events <sup>b</sup>	Infrequent Events <sup>c</sup>
<b>Category 1 – High Sensitivity</b> Buildings where vibration would interfere with interior operations	Vibration-sensitive research and manufacturing, hospitals with vibration-sensitive equipment, and university research operations	65	65	65
<b>Category 2 – Residential</b> Residences and buildings where people normally sleep	All residential land uses and any buildings where people sleep, such as homes, hotels, and hospitals	72	75	80
<b>Category 3 – Institutional</b> Institutional land uses with primarily daytime use	Schools, churches, other institutions, and quiet offices	75	78	83

Source: FTA 2006

Notes:

- a "Frequent Events" are defined as more than 70 vibration events of the same source per day.
- b "Occasional Events" are defined as between 30 and 70 vibration events of the same source per day.
- c "Infrequent Events" are defined as fewer than 30 vibration events of the same source per day.

VdB = vibration velocity decibel, referenced to  $1 \times 10^{-6}$  inches/second

3 PPV is defined as the maximum instantaneous positive or negative peak of a vibration signal. PPV is commonly referred to as vibration velocity amplitude and is often used in monitoring of blasting vibration since it is related to the stresses that are experienced by buildings.

**Table A-4 Acceptable Ground-Borne Vibration Levels with Respect to Building Damage**

Building Category	PPV (inches/second)	Approximate Acceptable Vibration Velocity Level (VdB)
Reinforced concrete, steel, or timber (no plaster)	0.5	102
Engineered concrete and masonry (no plaster)	0.3	98
Nonengineered timber and masonry buildings	0.2	94
Buildings extremely susceptible to vibration damage	0.12	90

Source: FTA 2006

PPV = peak particle velocity, VdB = vibration velocity decibel, referenced to  $1 \times 10^{-6}$  inches/second

**Applicability.** This provides context for decision makers and for examining potential impacts of the proposed Facility in this EIS.

**EIS Resource Area(s).** Noise

**A.2.17 Occupational Safety and Health Act**

**Responsible Agency/Governing Body.** Occupational Safety and Health Administration

**Description.** The Occupational Safety and Health Act (OSHA) includes numerous regulations pertaining to worker safety (29 CFR) and provides oversight and enforcement of these regulations. These regulations set standards for safe workplaces and work practices, including the reporting of accidents and occupational injuries. Some OSHA regulations contain standards relating to hazardous materials handling, including workplace conditions, employee protection requirements, first aid, and fire protection, as well as material handling and storage. Washington is a “state plan state” and, therefore, approved by Occupational Safety and Health Administration to run its own safety and health program and allow more stringent rules and regulations.

**Applicability.** Compliance with the state regulations (see Section 3.13, Washington Industrial Safety and Health Act (WISHA)) results in OSHA compliance so that employees do not suffer any material impairment of health and functional capacity due to occupational exposure to hazards.

**EIS Resource Area(s).** Environmental Health

**A.2.18 Section 106 of National Historic Preservation Act**

**Responsible Agency/Governing Body.** Advisory Council on Historic Preservation, Washington State Department of Archaeology and Historic Preservation (DAHP), and Tribal Historic Preservation Offices

**Description.** The National Historic Preservation Act (NHPA) of 1966 (54 USC 300101 et seq.), as amended, requires federal agencies to identify and manage historic properties that are under their jurisdiction, and encourages the preservation of historic properties through consultation and cooperation with state and local governments, Indian tribes, and private individuals. The NHPA stipulates the roles that the federal government has to preserve historic properties, consider the effects of their actions, advance the NHPA’s purposes, and avoid activities that would be contrary to its purpose. The NHPA also outlines the roles of the Advisory Council on Historic Preservation, State Historic Preservation Officers, and Tribal Historic Preservation Officers. Section 106 of the NHPA (36 CFR 800; 54 USC 306108) requires that any federal or federally assisted project, or any project requiring federal licensing or permitting, take into account the effect of the undertaking on historic properties listed in or eligible for the

National Register of Historic Place (NRHP). Under the NHPA, federal agencies must evaluate impacts to all cultural resources and those prehistoric and historic resources that are eligible for or listed in the NRHP before a project is approved.

**Applicability.** The permitting action under Section 10 of the Rivers and Harbors Act requires that the USACE comply with NHPA Section 106 and consult with the DAHP and affected Indian tribes on the proposed Project. NHPA does not apply to EFSEC's SEPA environmental review.

**EIS Resource Area(s).** Historic and Cultural Resources

#### **A.2.19 Maritime Transportation Security Act**

**Responsible Agency/Governing Body.** USCG

**Description.** The MTSA (33 CFR 101-107) is designed to protect ports and waterways from threats to homeland security. The law requires vessels and port facilities to develop security plans and assess the vulnerability of their facilities. USCG collaborates on the plans to help secure ports and vessels in or adjacent to US waterways.

**Applicability.** The proposed Facility would be subject to the MTSA and is required to develop a plan and operate in compliance with it. The Applicant must define the security organization, designate a facility security officer, conduct a facility security assessment, and implement the Transportation Worker Identification Credential (TWIC) program, including only allowing unescorted access to TWIC card holders.

**EIS Resource Area(s).** Environmental Health, Transportation

#### **A.2.20 Private Aids to Navigation**

**Responsible Agency/Governing Body.** USCG

**Description.** 33 CFR 66 establishes an approval process for navigational aids placed by private entities. The regulations ensure that any aids installed are consistent with the standardized system established by federal law and will not present a hazard to navigation.

**Applicability.** An application would be submitted to USCG for approval prior to installation of lighting or other navigational aids required or planned for the proposed Facility.

**EIS Resource Area(s).** Transportation

#### **A.2.21 Maritime Procedures**

**Responsible Agency/Governing Body.** USCG

**Description.** 46 CFR 35 establishes the operating requirements for tank vessels. The regulations provide for a correct and uniform administration of the vessel inspection requirements applicable to tank vessels.

**Applicability.** All vessels calling on the proposed Facility would be required to comply with the provisions of the Maritime Procedures in the operation of the vessel. USCG inspects tank vessels every 5 years (or more often, if necessary) to ensure that the equipment apparatus for storage, hull, machinery, boilers, and appliances of the vessels comply with marine inspection laws.

**EIS Resource Area(s).** Transportation

### **A.2.22 Hazardous Materials Regulations**

**Responsible Agency/Governing Body.** US Department of Transportation, through the Pipeline and Hazardous Materials Safety Administration (PHMSA) and the Federal Railroad Administration (FRA)

**Description.** Pursuant to the Hazardous Materials Transportation Act (49 USC 5101 et seq.), the Hazardous Materials Regulations (49 CFR 100-185) govern the shipping of hazardous materials by air, highway, water, and rail. The Hazardous Materials Regulations cover many aspects of hazardous materials transportation including safety and security requirements; designation, description, and classification of hazardous materials; packing, handling, labeling, marking, and placarding of hazardous materials; preparation, execution, and use of shipping documents pertaining to hazardous materials; fire protection requirements; notification, recording, and reporting of the unintentional release in transportation of hazardous materials; and designing and manufacturing packages and containers for use in the transportation of hazardous materials.

**Applicability.** Based on its specific flammability and combustibility characteristics, crude oil is designated a Class 3 hazard. Crude oil transportation by rail and vessel for the proposed Project must follow the Hazardous Materials Regulations applicable to transporting Class 3 materials.

**EIS Resource Area(s).** Environmental Health, Public Services and Utilities, Transportation

## **A.3 State Laws, Policies, and Plans**

### **A.3.1 State Environmental Policy Act**

**Responsible Agency/Governing Body.** EFSEC

**Description.** The State Environmental Policy Act (SEPA) provides a way to identify possible environmental impacts that may result from governmental decisions. These decisions may be related to issuing permits for private projects, constructing public facilities, or adopting regulations, policies, or plans. Information provided during the SEPA review process helps agency decision makers, applicants, and the public understand how a proposal would affect the environment. This information can be used to change a proposal to reduce likely impacts, or to condition or deny a proposal when adverse environmental impacts are identified (Ecology 2015a). During the site certification process, EFSEC functions as the “lead agency” responsible for complying with SEPA’s procedural requirements (WAC 463-47).

**Applicability.** SEPA statutes and regulations require consideration of impacts to environmental resources during the public environmental review of the proposed Facility.

**EIS Resource Area(s).** All resource areas

#### **A.3.1.1 Greenhouse Gas Emissions under the State Environmental Policy Act**

No specific state emission reduction requirements are applicable to the proposed Facility. Furthermore, no generally accepted methods exist to assess potential localized or global impacts of GHG emissions. Ecology has issued internal guidance to assist its staff in determining which projects should be evaluated and how to evaluate GHG emissions under SEPA (Ecology 2011). The guidance states that sources with emissions greater than 25,000 metric tons per year, in terms of CO<sub>2</sub>e, and that are proximately caused by a proposal should be quantified. Ecology staff may use the guidelines to make SEPA decisions for projects on which Ecology is the lead agency on a case-by-case basis.

### **A.3.2 EFSEC and Preemption by Revised Code of Washington 80.50**

#### **Responsible Agency/Governing Body.** EFSEC

**Description.** EFSEC was created to provide “one stop” siting and permitting for large energy projects. By establishing EFSEC, the state legislature centralized the evaluation and oversight of large energy facilities within one state agency. For facilities under its jurisdiction, EFSEC has been delegated authority by the EPA to issue permits under the CWA and CAA. Under Revised Code of Washington (RCW) 70.94.422, state air emission permits for energy facilities subject to RCW Chapter 80.50 are issued by EFSEC. EFSEC has adopted air emission standards in WAC 463-62-070 for facilities under its jurisdiction. These standards require proposals under EFSEC jurisdiction to comply with the requirements of applicable state air quality laws and regulations promulgated pursuant to Washington’s Clean Air Act, RCW Chapter 70.94, the federal CAA (42 USC 7401 et seq.), and WAC Chapter 463-78 (general and operating permit regulations for air pollution sources as adopted by reference). WAC 463-78 establishes the general and operating permit regulations for air pollution sources and adopts by reference the substantive provisions of WAC 173-400 (General Regulations for Air Pollution Sources), WAC 173-460 (Controls for New Sources of Toxic Air Pollutants), and WAC 173-441 (Reporting of Emissions of Greenhouse Gases). EFSEC is partially delegated authority to issue federal air emission permits (EPA 1996b). As part of this delegation, EFSEC must ensure the proposed Facility complies with air quality regulations, including NAAQS, NSR, NSPS, and Maximum Achievable Control Technology standards for HAPs.<sup>4</sup>

**Applicability.** The proposed Project falls under EFSEC’s jurisdiction and is subject to EFSEC’s regulatory authority. State and local regulatory permits and requirements that would otherwise be applicable to the proposed Project (e.g., land and shoreline use requirements) are therefore preempted pursuant to RCW 80.50.110 and RCW 80.50.120. If a Site Certification Agreement (SCA) were to be issued for the proposed Project it would take the place of any regulatory permit, certificate, plan, or similar approvals that would otherwise be required by a state or local government in Washington.

**EIS Resource Area(s).** All resource areas

### **A.3.3 Ecology/Alcoa Consent Decree**

**Responsible Agency/Governing Body.** Ecology and Clark County Superior Court

**Description.** The 2009 Consent Decree as amended (State of Washington 2011) regarding remedial actions at the Alcoa Vancouver Site established deed restrictions to control future activities on the property and provided for supplemental remedial actions. The deed restrictions include the following conditions for the areas covered by Restrictive Covenant:

1. Use of the property is limited to industrial purposes.
2. Activities that may result in the release or exposure to the environment from contaminated soil in the Restricted Area are prohibited.
3. Use of extraction wells and the use of groundwater extracted from the property are prohibited. Under the terms of the Environmental Covenant, groundwater on the property can be used for construction purposes.

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<sup>4</sup> Air quality regulations established by the Southwest Clean Air Agency (SWCAA) are superseded by EFSEC jurisdiction; however, SWCAA regulations are discussed in the *Revised Air Permit Application*, Section 5.1.3.2, to demonstrate that even if the local regulations did apply, the proposed Facility would be compliant. SWCAA’s air emission regulations generally parallel Ecology’s emission limits from new and modified sources, with the exception of general standards for maximum emissions from air pollution sources.



4. Activities affecting the integrity of the Remedial Action are prohibited.
5. Activities resulting in the release of hazardous substances on the property are prohibited.
6. Ecology is to be provided advance notice in the event of the planned sale of all or a portion of the property.
7. Leaseholders (if any) are subject to similar restrictions as the property owners.
8. Ecology's approval is required for inconsistent uses proposed for the property; approval of these uses is subject to a public comment period.
9. Ecology has the right to enter the property for inspection purposes.
10. Release of the property from the terms of the Restrictive Covenant requires Ecology's approval.

In addition to land use restrictions, WAC 173-160-171 (Minimum Standards for Construction and Maintenance of Wells) prohibits installation of a drinking water well within 1,000 feet.

**Applicability.** Disturbance of existing site contamination during construction would require the Applicant to comply with the requirements of the state-implemented consent decrees.

**Resource Area(s).** Earth Resources, Water Resources

#### **A.3.4 State Building Code Act (2012 International Building Code)**

**Responsible Agency/Governing Body.** EFSEC, Washington State Department of Enterprise Services, City of Vancouver

**Description.** The State of Washington regulates earth resources and geological hazards on nonstate-managed lands through the adoption of building codes. Structures and buildings are designed and constructed to protect the lives of occupants in the event of an earthquake or other seismic event. Under RCW 19.27.031 (1)(a), Washington adopted the 2012 International Building Code (IBC) as the state building code. The law requires the state building code to be in effect in all cities and counties in the state. Cities and counties are allowed to amend the state building code as it applies within their jurisdictions provided they meet the minimum performance standards of the state code (RCW 19.27.040). EFSEC adopts the state building code under WAC 463-62-020 as its seismic protection standard for construction of energy facilities under its jurisdiction.

The IBC incorporates recommendations from the American Society of Civil Engineers (ASCE) 7-10, *Minimum Design Loads for Building and Other Structures* (ASCE 2010). The seismic code provisions are the minimum requirements necessary for design and construction of new buildings and other structures to resist earthquake ground motion. The intent of the code provisions is to provide reasonable assurance of seismic performance that will avoid serious injury and loss of life, loss of function in critical facilities, and nonstructural repair costs, where practical to do so. These objectives are addressed by avoiding structural collapse in very rare, extreme ground-shaking events, and by providing reasonable control of damage to structural and nonstructural systems that could lead to injury and economic or functionality losses for more moderate and frequent ground shaking. The code establishes design methods and requirements to achieve these objectives. These design requirements include minimum lateral strength and stiffness for structural systems and guidance for anchoring, bracing, and accommodation of structural drift for nonstructural systems.

The City regulates potential impacts from geologic hazards through adoption and implementation of the IBC design standards discussed above. Under Vancouver Municipal Code (VMC) 17.012.010, and in

accordance with RCW 19.27, the City has adopted by reference the 2012 edition of the IBC and Appendices I, J (not including IBC Sections J103.2, Exemption 1), and M (International Existing Building Code) as published by the International Code Council, and as adopted and amended by RCW Chapter 19.27, WAC Chapter 51-50. In lieu of adopting IBC Chapter 1, the City provides its own administrative provisions under VMC Chapter 17.08, and enforcement under VMC Title 22. The State Building Code Act (RCW 19.27) adopts by reference the International Fire Code, including those standards of the National Fire Protection Association referenced by the International Fire Code, and requires each local jurisdiction to enforce the State Building Code within its jurisdiction.

**Applicability.** The Applicant has stated they would follow professionally established industry practices to identify the geotechnical characteristics of the proposed Facility site and to assess how the site would behave in the event of ground movement thresholds established in the IBC based on the seismic class of the site. Based on this assessment, appropriate methods would be selected to protect aboveground structures from the IBC-established design seismic event. The design would include ground improvements, foundations, and structures appropriate for the anticipated ground movements associated with the design event. The IBC requires that these evaluation and design steps be performed by professionals in seismic structural engineering and related fields.

**EIS Resource Area(s).** Earth Resources, Public Services and Utilities

#### **A.3.5 Washington State Water Pollution Control Act and Wetland Protection**

**Responsible Agency/Governing Body.** Ecology

**Description.** If a wetland is not subject to other local or federal regulatory program, Ecology will use the provisions of the Washington State Water Pollution Control Act (RCW 90.48) to prohibit the discharge of waste, require permits, and mitigate impacts to wetlands.

**Applicability.** The proposed Facility would be sited on an existing industrial site and would not impact wetlands or wetland buffers. As such, this regulation would not likely apply to the proposed Facility, but could be exercised if wetlands were adversely impacted due to a large overland flow or other unforeseen situation.

**EIS Resource Area(s).** Water Resources, Aquatic Species

#### **A.3.6 New Source Review/Notice of Construction Permit**

**Responsible Agency/Governing Body.** EFSEC

**Description.** Businesses that are new, replacing or modifying emission control equipment, or increasing their air pollutant emissions must undergo NSR and acquire a Notice of Construction (NOC) Order of Approval. An NOC limits the business' air pollutant emissions. It is also called a "preconstruction permit" because the business owner must get this permit before starting construction or operation of the business (Ecology 2015b). Industrial sources in Washington are subject to NSR. EFSEC has been delegated the authority to conduct federal NSR. EFSEC conducts federal and state NSRs under WAC 173-400-110 as adopted under WAC 463-78.

**Applicability.** The Applicant requested an NOC approval from EFSEC as part of its Application for Site Certification. The application provided a description of the proposed Facility, an inventory of regulated pollutant emissions, and proposed regulatory controls. Additional detail on preconstruction permitting is provided in the Revised Air Permit Application, Appendix E.

**EIS Resource Area(s).** Air Quality

**A.3.7 Washington Ambient Air Quality Standards**

**Responsible Agency/Governing Body.** Ecology

**Description.** During the NOC approval process, compliance with these standards is verified to ensure a proposal's emissions do not cause the receiving airshed's air quality to exceed the applicable WAAQS (see Table A-1, National and Washington Ambient Air Quality Standards).

**Applicability.** The Applicant would demonstrate compliance with the WAAQS by selecting appropriate emissions control equipment and demonstrating (using regulatory acceptable techniques) that stationary source emissions do not contribute to an exceedance of the WAAQS. This demonstration is completed by dispersion modeling.

**EIS Resource Area(s).** Air Quality

**A.3.8 Air Toxics Regulations**

**Responsible Agency/Governing Body.** Ecology

**Description.** HAPs and toxic air pollutants (TAPs) are those pollutants that cause or may cause cancer or other serious health effects, or adverse environmental and ecological effects, and are collectively known as Air Toxics. DPM is one of the most common Air Toxics found in ambient air and is present as a result of the combustion of diesel fuel either in stationary sources or mobile sources. Stationary source HAPs are regulated under the federal code and include 187 pollutants, some of which are classes of compounds (lead compounds, for example). Washington further delineates HAPs with a list of 2,998 individual substances. Washington maintains its own TAPs list, and regulates TAP emissions from new and modified air pollution sources (WAC 173-460). These regulations establish acceptable outdoor exposure levels (Acceptable Source Impact Levels [ASILs]) for hundreds of air pollutants. The ASILs are screening concentrations in ambient air established conservatively to protect human health. The regulations also identify Small Quantity Emission Rates that represent a level of emissions below which modeling is not required to demonstrate compliance with ASILs. However, in the event total emissions of a pollutant are greater than its Small Quantity Emission Rate, dispersion modeling is required to determine compliance with the pollutant's ASIL. WAC 173-460 also requires application of Best Available Control Technology (BACT) to TAP emissions that exceed established de minimis levels and trigger the need to submit an NOC. BACT is a regulatory determination of the best control technology for a specific application, considering the economic, energy and environment, and other costs of feasible alternatives. A BACT technology must be a demonstrated and available technology. Generally, the same technologies or operations that reduce criteria pollutants also reduce TAPs. For example, the use of combustion controls to optimize combustion reduces both criteria pollutants and TAPs.

**Applicability.** The Applicant demonstrated compliance with the ASILs. Emissions from eight TAPs (i.e., arsenic, benzene, cadmium, chromium (hexavalent), DPM, 7,12-dimethylbenz(a) anthracene, NO<sub>2</sub>, and SO<sub>2</sub>) exceeded the applicable Washington small quantity emission rate (i.e., a screening impact level), based on operational emission estimates for the proposed Facility stationary sources (i.e., excluding mobile sources) and, thus, dispersion modeling was conducted to assess projected compliance with Ecology's published ASILs. The modeling conducted by the Applicant demonstrated that the maximum predicted concentrations attributable to the proposed Facility's emission units are less than the Ecology ASILs for all eight TAPs.

**EIS Resource Area(s).** Air Quality

### **A.3.9 Washington Natural Heritage Program**

**Responsible Agency/Governing Body.** Washington Department of Natural Resources (WDNR)

**Description.** The Washington Natural Heritage Program (WNHP) within the WDNR places a management priority on the preservation of high-quality native plant and ecological communities. The WNHP manages site-specific and species/ecosystem-specific information on priority species and ecosystems—that is, those that are rare or have very limited distribution. Specifically, the WNHP’s mandate is to:

- Identify which species and ecosystems are priorities for conservation effort,
- Build and maintain a database for priority species and ecosystems, and
- Share the information with others so that it can be used for environmental assessments and conservation planning purposes.

Information on priority species and ecosystems comes from a wide variety of sources, including WNHP and other state/federal agency botanists, Native Plant Society members, consultants, University of Washington Rare Care program, published literature, and so on. The data are used by a number of agencies, organizations, companies, and individuals for conservation planning, environmental review processes, and other information requests (WDNR 2015).

**Applicability.** This provides context for decision makers and for examining potential impacts of the proposed Facility in this EIS.

**EIS Resources Area(s).** Terrestrial Vegetation, Terrestrial Wildlife, Aquatic Species

### **A.3.10 Washington Endangered Species Act**

**Responsible Agency/Governing Body.** WDFW and City of Vancouver

**Description.** WAC 232-12-197 identifies and classifies native wildlife that have a need for protection and/or management to ensure their survival as free-ranging populations in the state and defines the process by which listing, management, recovery, and delisting of a species can be achieved. The WDFW maintains lists of endangered wildlife (WAC 232-12-014) and threatened and sensitive wildlife (WAC 232-12-011) to identify native wildlife in need of protection to ensure their survival as free-ranging populations in Washington. Further, state candidate species as defined in WDFW Policy M-6001 are identified and reviewed for possible upgrading to state listing as endangered, threatened, or sensitive. The purpose of these listings is to assist with agency management and decision making.

*Endangered* means any wildlife species native to the state of Washington that is seriously threatened with extinction throughout all or a significant portion of its range within the state. *Threatened* means any wildlife species native to Washington that is likely to become an endangered species in the foreseeable future throughout a significant portion of its range within the state without cooperative management or removal of threats. *Sensitive* means any wildlife species native to Washington that is vulnerable or declining and is likely to become endangered or threatened in a significant portion of its range within the state without cooperative management or removal of threats.

The WDFW’s Priority Habitats and Species (PHS) Program provides comprehensive information on important fish, wildlife, and habitat resources that is relayed to local governments, state and federal agencies, tribal governments, and others for planning purposes. The PHS list identifies and defines the species and habitats that are priorities for conservation that require special management for their survival

due to their population status, sensitivity to habitat alteration, and/or recreational, commercial, or tribal importance. Priority species include state endangered, threatened, sensitive, and candidate species; animal aggregations (e.g., heron colonies, bat colonies) considered vulnerable; and species of recreational, commercial, or tribal importance that are vulnerable.

Priority habitats are habitats with unique or significant value to a diversity of wildlife. A Priority habitat may consist of a unique vegetation type (e.g., shrub-steppe) or dominant plant species (e.g., juniper savannah), a described successional stage (e.g., old-growth forest), or a specific habitat feature (e.g., caves or cliffs). In addition, the WNHP within the WDNR places a management priority on the preservation of high-quality native plant and ecological communities.

**Applicability.** Compliance with the Washington State ESA would be covered by the BE prepared for federal review (see Section 1.2.9, Endangered Species Act).

**EIS Resource Area(s).** Terrestrial Vegetation, Terrestrial Wildlife, Aquatic Species

#### **A.3.11 Aquatic Resources Program (RCW 79.105)**

**Responsible Agency/Governing Body.** WDNR

**Description.** WDNR's Aquatic Resources Program manages the use of state-owned aquatic lands pursuant to RCW 79.105. Aquatic lands include tidelands, shorelands, harbor areas, and beds of navigable waters (WAC 332-30-106).

**Applicability.** While most of the areas occupied by Berths 13 and 14 are on Port-owned tidelands, a small portion of Berth 13 may be located on state-owned aquatic lands managed by WDNR. WDNR typically requires leases or other proprietary use authorizations for uses of aquatic lands. However, WDNR and the Port have entered into an agreement whereby the Port has been granted exclusive authority to enter into leases or other use authorizations involving state-owned aquatic lands within the area subject to the Port Management Agreement. EFSEC views such proprietary use authorizations as outside the scope of the preemptive effect of RCW 80.50.110 and RCW 80.50.120.

**EIS Resource Area(s).** Land and Shoreline Use, Aquatic Species

#### **A.3.12 Ballast Water Management**

**Responsible Agency/Governing Body.** USCG, WDFW, ODEQ

**Description.** As regulated by water management law under RCW 77.120 and rule pursuant to WAC 220-150, the WDFW implements a Ballast Water Management program for all vessels (foreign and of US origin) of 300 gross tons<sup>5</sup> or more capable of carrying ballast water into the waters of the state after operating outside the waters of the state. The owner or operator of a vessel is required to complete a ballast water reporting form<sup>6</sup> at least 24 hours before arriving in Washington waters, before transiting between Oregon and Washington ports on the Columbia River, and before transiting between Washington ports. Discharge of ballast water into waters of the state is authorized only if an open-sea exchange has been performed under WAC 220-150-040, or if the vessel has otherwise managed its ballast water to meet standards set by the WDFW consistent with applicable state and federal laws. Management options include:

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5 A gross ton is equal to 2,000 pounds.

6 The form is the same as that required by the USCG.

- No discharge of ballast water into Washington waters.
- Vessels voyaging to Washington from a Pacific Coast port in Alaska, Canada, Oregon, California, or Central America must conduct an open-sea exchange at least 50 nautical miles from any shore and in waters more than 200 meters deep unless using a USCG-accepted or -approved ballast water treatment system.
- Vessels voyaging to Washington from a port outside the US Exclusive Economic Zone must conduct an open-sea exchange at least 200 nautical miles from any shore and in waters more than 2,000 meters deep unless using a USCG-accepted or -approved ballast water treatment system.
- Vessels voyaging to Washington from a port within the state's common water zone are exempt from having to conduct an open-sea exchange if the ballast water and sediment originated solely from a valid exchange prior to entering the common water zone or from uptake within the common water zone.
- Use only water from a US public water system as defined in 33 CFR 151.2025(2).

**Applicability.** All vessels calling on the proposed Facility would be required to comply with the provisions of the Ballast Water Management program in the operation of the vessel. WDFW may board and inspect vessels without advance notice, take samples, and issue warnings, notices of correction, and notices of penalty.

**EIS Resource Area(s).** Aquatic Species

#### **A.3.13 Washington Industrial Safety and Health Act**

**Responsible Agency/Governing Body.** Washington Department of Labor & Industries

**Description.** WISHA, enacted in 1973, ensures that employers provide safe and healthful working conditions for employees in Washington. Employers in Washington must comply with all applicable safety and health rules as identified in WAC 296 and the WISHA under RCW 49.17.

**Applicability.** The proposed Facility site was previously the location of industrial activities that resulted in soil, groundwater, and sediment contamination. Final removal of contaminated soils on the site was completed in March 2010, as required by the Cleanup Action Plan and Consent Decree for the site pursuant to RCW 70.105D, RCW 64.70, and WAC 173-340. However, residual concentrations of contaminants remain in soil, sediment, and groundwater at the proposed Facility site, and Environmental Restrictive covenants have been placed on the property. In addition, four locations within the proposed Facility boundary have more restrictive conditions. The Applicant would be required to demonstrate conformance with the requirements of the consent decrees and restrictive covenants for the site, including review and approval by Ecology for specific work within the areas with more restrictive conditions.

**EIS Resource Area(s).** Environmental Health

#### **A.3.14 Washington State Waste Discharge Permit Program**

**Responsible Agency/Governing Body.** Ecology, City of Vancouver

**Description.** WAC 173-216 establishes the State of Washington's State Waste Discharge Permit Program, pursuant to the CWA and federal pretreatment regulations (40 CFR Part 403). The program requires that industrial operations obtain authorization prior to discharging waste materials into any municipal sewerage system. Ecology Order No. DE 87-S188 delegates authority to the City of Vancouver to permit and accept industrial wastewater discharges (Clark Regional Wastewater District 2013). RCW

19.27.097 requires that applications for buildings that need potable water not be approved unless evidence of an adequate water supply is available. WAC 246-271-020 prohibits the disposal of domestic or industrial waste in a manner that could affect water supplies or public health. RCW 19.122 requires an excavator to call 8-1-1 to inform utility facility operators of planned excavation not less than two business days and not more than 10 business days before the scheduled excavation start date.

**Applicability.** See Industrial Wastewater Discharge Permits (VMC 14.10)

**EIS Resource Area(s).** Water Resources, Public Services and Utilities

### **A.3.15 State Spill Reporting**

**Responsible Agency/Governing Body.** Washington Emergency Management Division

**Description/Applicability.** In addition to reporting sheens to the National Response Center, all spills to water, land, and secondary containment must be immediately reported to the Washington Emergency Management Division (RCW 90.56.280).

**EIS Resource Area(s).** Water Resources, Earth Resources, Environmental Health, Potential Accidents

### **A.3.16 Shoreline Management Act**

**Responsible Agency/Governing Body.** EFSEC

**Description.** The Washington State Legislature passed the Shoreline Management Act (SMA) (RCW 90.58) in 1971 and voters ratified the law in 1972. The SMA provides a statewide framework for managing, accessing, and protecting shorelines and applies to all marine waters, streams with mean annual flow over 20 cubic feet per second, water areas and reservoirs 20 acres and greater, upland areas within 200 feet landward of these waters, all associated wetlands, and the lands lying under them. The SMA requires local governments (cities, towns, and counties) to adopt local plans and regulatory programs called Shoreline Master Programs (SMPs) to implement the SMA. The SMA emphasizes the appropriate use of shorelines for preferred uses, protection of shoreline resources, and public access. Each jurisdiction's SMP acts as an "overlay zone" for the shoreline area. EFSEC views regulatory SMA and SMP provisions as within the scope of the preemptive effect of RCW 80.50.110 and RCW 80.50.120.

**Applicability.** This provides context for decision makers and for examining potential impacts of the proposed Facility in this EIS.

**EIS Resource Area(s).** Land and Shoreline Use

### **A.3.17 Hydraulic Code**

**Responsible Agency/Governing Body.** WDFW

**Description.** Since 1943, WDFW has administered the Hydraulic Project Approval (HPA) program under the state Hydraulic Code. On November 7, 2014, the WDFW adopted a comprehensive update of the state's Hydraulic Code rules (WAC 220-660). The program requires any project "that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state," such as construction or work on bulkheads, culverts, piers and docks, and terminals, to obtain an HPA permit, ensuring the project meets state conservation standards for finfish, shellfish, and their aquatic environment. All hydraulic projects must also meet applicable mitigation requirements, defined as the use of BMPs to sequentially avoid impacts, minimize and rectify unavoidable impacts, and compensate for remaining impacts (WAC 220-660-080).

**Applicability.** The Applicant proposed an in-water work window in their proposal and consulted with the WDFW HPA permit program. In April 2015, WDFW sent a letter to EFSEC providing advisory provisions to address WDFW concerns for fish life (under the HPA associated with construction at the marine terminal) and with that, they recommended an in-water work window to EFSEC between September 1 to January 15, instead of the Applicant’s proposed dates. Though WDFW has recommended an in-water work window, if more information becomes available that affects WDFW’s determination, they could further revise the proposed in-water work window.

**EIS Resource Area(s).** Aquatic Species

**A.3.18 Environmental Designation for Noise Abatement**

**Responsible Agency/Governing Body.** EFSEC

**Description.** The State of Washington, through WAC 463-60-352, has established rules consistent with EPA’s noise guidelines to establish maximum noise levels permissible based on the environmental designation for noise abatement (EDNA) of the noise source and the receiving properties (EFSEC 2015). The EDNA noise area classifications include Class A (residential areas), Class B (commercial areas), and Class C (industrial and agricultural areas). The class of a property is typically determined by its predominant land use. The proposed Facility would be considered a Class C noise source because the predominant land use is industrial. Table A-5 summarizes the maximum permissible noise levels established by the State of Washington (WAC 173-60) for Class A, B, and C properties.

**Table A-5 Washington State Maximum Permissible Noise Levels**

Noise Source	Noise Limitations* at Receiving Property (in dBA)		
	Class A	Class B	Class C
Class A (Residential)	55 (7:00 am – 10:00 pm) 45 (10:00 pm – 7:00 am)	57	60
Class B (Commercial)	57 (7:00 am – 10:00 pm) 47 (10:00 pm – 7:00 am)	60	65
Class C (Industrial)	60 (7:00 am – 10:00 pm) 50 (10:00 pm – 7:00 am)	65	70

Source: WAC 173-60

Notes:

\* At any hour of the day or night the applicable noise limitations above may be exceeded for any receiving property by no more than (i) 5 dBA for a total of 15 minutes in any 1-hour period, (ii) 10 dBA for a total of 5 minutes in any 1-hour period, or (iii) 15 dBA for a total of 1.5 minutes in any 1-hour period.

dBA = A-weighted decibel

WAC 173-60-050 identifies several sources of noise that are exempt from the noise limits. They include the following proposed Project-related activities:

- Sounds created by blasting (between 7:00 am and 10:00 pm)
- Sounds from temporary construction activities (except only between 7:00 am and 10:00 pm for Class A receptors)
- Sounds from surface carriers engaged in interstate commerce by railroad
- Traffic on public roads



WAC 173-60-50(6) also states “Nothing in these exemptions is intended to preclude the department from requiring installation of the best available noise abatement technology consistent with economic feasibility. The establishment of any such requirement shall be subject to the provisions of the Administrative Procedure Act, chapter 34.04 RCW.”

**Applicability.** The proposed Facility would be required to meet the noise limits established in RCW 70.107, consistent with the Federal Noise Control Act of 1972, as implemented in the requirements in WAC 173-60.

**EIS Resource Area(s).** Noise

### **A.3.19 Washington State Rail Plan 2013-2035**

**Responsible Agency/Governing Body.** Washington State Department of Transportation (WSDOT)

**Description.** The Washington State Rail Plan (WSDOT 2014a) serves as a strategic blueprint for future public investment in the state’s rail transportation system. It provides an integrated plan for freight and passenger rail, including 5- and 20-year funding strategies, that meets federal and state requirements. The plan informs the state Freight Mobility Plan (refer to description below); guides WSDOT as it develops strategic freight rail partnerships to support essential rail service; and establishes priorities for determining which freight rail investments should receive public support. It also guides Washington as it works with Oregon and British Columbia to implement intercity passenger rail service.

**Applicability.** This provides context for decision makers and for examining potential impacts of the proposed Facility in this EIS.

**EIS Resource Area(s).** Transportation

### **A.3.20 Washington State Freight Mobility Plan**

**Responsible Agency/Governing Body.** WSDOT

**Description.** The Washington State Freight Mobility Plan (WSDOT 2014b) was developed in part to bring the state into compliance with federal regulations mandating the preparation of a comprehensive intermediate and long-term freight plan. The Freight Mobility Plan considers the economic output produced by freight-dependent industries; maintaining or improving the condition and performance of the State Freight Economic Corridors; providing freight transportation corridors to support future growth; and implementing a priority freight policy, operational, and capital strategies.

**Applicability.** This provides context for decision makers and for examining potential impacts of the proposed Facility in this EIS.

**EIS Resource Area(s).** Transportation

### **A.3.21 Washington Transportation Plan 2030**

**Responsible Agency/Governing Body.** WSDOT

**Description.** The Washington Transportation Plan is a 20-year policy and investment guide that will help inform future policy decisions related to transportation systems. The plan presents recommendations for supporting the coordinated, connected, and efficient movement of freight and goods across the state, including the coordination of appropriate agencies to preserve freight capacity across jurisdictional boundaries in critical corridors. Other recommendations identify the need to improve designated freight

corridors by making connections to ports and to assist in the development of freight modal centers (Washington State Transportation Commission 2010).

**Applicability.** This provides context for decision makers and for examining potential impacts of the proposed Facility in this EIS.

**EIS Resource Area(s).** Transportation

### **A.3.22 Manual on Uniform Traffic Control Devices**

**Responsible Agency/Governing Body.** WSDOT

**Description.** This manual contains the standards for traffic control devices (such as signs, signals, and pavement markings) that regulate, warn, and guide road users along highways, county roads, and city streets. It functions as both a legal and an engineering document. RCW 47.36, Traffic Control Devices, requires WSDOT to adopt uniform standards for traffic control devices installed along state highways. The law also requires that traffic control devices along county roads fully conform to these adopted standards, and those along city streets conform to the extent possible. The Federal Highway Administration published the manual's current edition in 2009, with two revisions, which were incorporated in May 2012. The federal manual was modified to reflect conditions and regulations in the state of Washington in November 2011.

**Applicability.** This provides context for decision makers and for examining potential impacts of the proposed Facility in this EIS.

**EIS Resource Area(s).** Transportation

### **A.3.23 Washington State Energy Code**

**Responsible Agency/Governing Body.** EFSEC

**Description.** WAC Chapter 51-11 was adopted pursuant to Chapter 19.27A.020. It requires a minimum level of energy efficiency but allows flexibility in building design, construction, and heating equipment efficiencies.

**Applicability.** As the exact design of some proposed Facility elements has not been finalized, EFSEC would review the design of proposed structures for consistency with the adopted energy code prior to authorization of construction in the event that an SCA is granted.

**EIS Resource Area(s).** Energy and Natural Resources

## **A.4 Local Laws, Policies, and Plans**

### **A.4.1 Vancouver Municipal Codes**

**Responsible Agency/Governing Body.** City of Vancouver

**Description.** The VMCs identified by the Applicant and/or considered as context for examining potential impacts of the proposed Facility in this EIS are identified below.

**Applicability.** The construction and operation of the proposed Facility would be subject to VMCs.

**EIS Resource Area(s).** All resource areas

#### **A.4.1.1 Title 20 Land Use and Development (Zoning)**

VMC Title 20 (Development Code) is the vehicle the City uses to implement its Comprehensive Plan (City of Vancouver 2004). It contains regulations to manage the community's growth in a manner that ensures efficient use of land, preserves natural resources, and encourages good design. The Development Code includes a zoning map and regulations to protect ecologically sensitive and physically hazardous areas (Critical Areas) while also allowing for reasonable use of property (VMC 20.740). Protected Critical Areas include wetlands, fish and wildlife habitat conservation areas, geologically hazardous areas, and frequently flooded areas. A major grading permit is required for any grading, cuts, fills, and/or stockpiling of more than 500 cubic yards of earthen materials. A major grading permit is also required for work within a designated Critical Area regardless of the grading volume. Separate grading permits are not required for excavations for utilities or building foundations. The grading permit review aims to ensure that a proposal has designed cuts and fills to conform to the IBC, avoid creation of unstable slopes, provide drainage, avoid soil erosion, avoid impact to adjacent properties and natural resources, and result in stable site conditions.

#### **Archaeological Resource Protection (VMC 20.710)**

VMC 20.710.020 encourages the identification and preservation of cultural resources within the City and establishes the procedures and standards for identifying, documenting, and preserving cultural resources. It outlines the preparation of a predetermination study or survey to determine the potential for extant cultural resources and their significance within a proposed disturbance area. It also states that treatments of potentially significant resources, including additional evaluation, avoidance, mitigation, or data recovery, are to be conducted in accordance with the Planning Official's recommendation and the terms of any necessary permit from the DAHP.

#### **Critical Areas Protection Ordinance (VMC 20.740.130)**

The City has adopted standards for landslide, erosion, and seismic hazard areas through its Critical Areas Protection ordinance (VMC 20.740.130). A major grading permit is required for work within a designated Critical Area regardless of the grading volume.

The ordinance provisions are designed to protect human health, safety, and infrastructure, and to avoid impacts on adjacent lands. No landslide or erosion hazard areas are identified at the proposed Facility site. Seismic hazards are present throughout the area, and the provisions require compliance with the adopted building codes. The local regulations described above would typically apply to a project proposed within the jurisdictional boundaries of the City. However, because the proposed Facility is subject to EFSEC jurisdiction, all state and local regulations described above related to earth resources would be preempted by EFSEC.

#### **Wetland Protection (VMC 20.740.140)**

VMC 20.740.140 establishes that development or clearing activities result in no net loss of wetland or associated wetland buffer functions. Under the City's Critical Areas Protection ordinance, compensatory mitigation is required if actions affect functions or values of wetlands, including impacts via buffers.

#### **Frequently Flooded Areas (VMC 20.740)**

VMC 20.740 establishes standards for development within flood hazard areas, including special flood hazard zones identified by the FEMA and the potential Channel Migration Zone areas identified for Clark County. The standards require development (e.g., placement of homes, roads, railroads, trails, dikes, levees, pipelines, utilities) in a manner that prevents increased risk of flooding and flood damage on adjacent properties and ensures that structures are built to withstand floods. Documentation certified by a

qualified professional would be required of the Applicant to demonstrate how the no-rise<sup>7</sup> and other applicable standards will be met. The ability of all in-water structures as part of the Proposed Action to withstand hydraulics during flood events would also require documentation by a qualified structural engineer licensed in Washington.

Portions of the transfer pipeline would be located in an isolated floodplain near the Clark County Jail Work Center and would be built aboveground. Additionally, a portion of the storage area on Parcel 1A (storage area [Area 300]) is identified as an isolated floodplain previously approved for fill (PRJ2011-01308/ARC2012-00004/CAP2012-0006/TRE2012-00043).

#### **Tree Conservation Ordinance (VMC 20.770)**

The City's Tree Conservation Ordinance (VMC 20.770) establishes standards for the protection and planting of trees within the City to maintain and enhance the urban tree canopy. The standards require tree retention, unless necessary for development, and the planting of new trees to obtain at least 30 tree units per acre. The City interprets the provisions of VMC 20.770 as applicable only to areas of previously undisturbed pervious surface, such that tree density requirements would not apply to the surfaces that are impervious due to historical development and recent grading. A Level V Tree Plan was completed and approved for an undeveloped portion of the proposed Facility site owned by Clark County for the Clark Public Utilities Electrical Substation Project.

#### **Landscaping (VMC 20.925)**

VMC 20.925 establishes requirements for landscaping and screening for new or substantially remodeled buildings. Setback and screening/landscaping requirements generally do not apply within the Port or on properties bordering Port property. Portions of the proposed Facility site that border property not owned by the Port or with frontage on a public street (e.g., the boundary of the storage area [Area 300] along NW Lower River Road [State Route 501] and Farwest Steel) are subject to the landscaping and setback requirements. Additionally, the City requires the northern boundary of the storage area (Area 300) along NW Lower River Road (State Route 501) to meet the low screen (L2) standard and maintain a 10-foot setback. The western boundary of the storage area (Area 300) abuts the IH-zoned (heavy industrial) Farwest Steel parcel and would be subject to the L1 standard and a 5-foot setback. In addition, a minimum of 10 percent landscaping and perimeter screening is required in the parking lot of the administration building in the unloading and office area (Area 200) as required by VMC 20.945.040.

#### **Offsite Impacts (VMC 20.935)**

VMC 20.935 identifies performance standards for proposed land uses and development activities, including standards for noise. Section 20.935.030(A) applies the noise limits and exemptions established by WAC 173-60, as identified above, except that the "maximum noise levels shall be reduced by 10 dBA between the hours of 10:00 pm and 7:00 am for all types of receiving properties." In addition to the WAC noise limits and exemptions, the City restricts outdoor construction activity, including construction staging, to between 7:00 am and 8:00 pm, 7 days a week (VMC 20.935.030(A)). VMC 20.935.030(E) also prohibits offsite vibration impacts, as follows: "No development or use shall create offsite vibration impacts, discernible without instruments at the property line of the affected use."

VMC 20.935.030 addresses light and glare for all existing and new development in the City. This ordinance prohibits the creation of offsite glare from direct or reflected light sources. Under this ordinance, the City may impose conditions to minimize potential offsite light and glare impacts from new development but does not provide specific limits.

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<sup>7</sup> "No-rise" meaning no net increase in the base flood (1 percent annual chance) water surface elevation.

**Signs (VMC 20.960)**

VMC 20.960 regulates the placement of signs visible from the public right-of-way. Within industrial districts, free-standing signs are limited to one sign per street frontage. The maximum height is 15 feet and no portion may project into the right-of-way. The signs are permitted to be 1 square foot for each linear foot of frontage up to 250 square feet. Signs placed on buildings may be no larger than 12 percent of the building elevation and a maximum of 250 square feet in size.

**Solid Waste Disposal and Recycling (VMC 20.970)**

VMC 20.970 contains provisions for the placement and screening of solid waste disposal and recycling activities. No exterior solid waste disposal or recycling would be conducted at the proposed Facility. All operational waste and recycling would be collected inside the office or other buildings and disposed of at an approved landfill. VMC 6.12.110 requires commercial and industrial facilities to maintain appropriate containers for the disposal of solid waste and requires proper disposal either by the facility or by a commercial disposal contractor.

**A.4.1.2 Title 14, Water and Sewers**

**Industrial Wastewater Discharge Permits (VMC 14.10)**

The City requires industrial waste discharge permits for the discharge of industrial wastewater to the sanitary sewer system as regulated by VMC 14.10. Applications for wastewater discharge permits must be filed at least 120 days prior to the desired date of discharge, and the permit must be obtained prior to commencing discharge. These regulations are established for compliance with the State of Washington Waste Discharge Permit program (WAC 173-216), the CWA, and federal pretreatment regulations (40 CFR Part 403). The ordinance requires appropriate pretreatment of industrial wastes to protect the City’s WWTP, WA0024350, and receiving waters from potential harm.

**Stormwater Management System and Review (VMC 14.24)**

The City requires that stormwater management systems be designed in accordance with VMC 14.24-26 and a review of such systems be completed (VMC 14.09). An SPCC Plan and stormwater report are required to be submitted for the review. While EFSEC must approve the final design and the stormwater report prior to construction, the City would provide a review and advise EFSEC regarding the final design’s compliance with Ecology’s administrative codes for stormwater and spill prevention, preparedness, and response, and Ecology’s 2014 Stormwater Management Manual for Western Washington. VMC Section 14.26 mandates several requirements (Table A-6), including the adoption of BMPs during operations, and outlines design elements and plans that would contain information on the BMPs that would be used.

**Table A-6 Summary of VMC 14.26.120-A – Minimum Requirements Applicable to the Proposed Facility**

VMC 14.26.120 Requirement	Method of Compliance
1. Precautions: The owner/operator shall take precautions to prevent accidental releases of hazardous materials. Hazardous materials shall be separated and prevented from entering stormwater drainage systems, septic systems, and drywells.	<ul style="list-style-type: none"> <li>• Facility design</li> <li>• Individual Industrial Stormwater Permit</li> <li>• Operations SPCC Plan</li> <li>• Spill Contingency Plan</li> </ul>
2. Hazardous Materials Management: Hazardous materials shall be managed so that they do not threaten human health or the environment, or enter water resources.	<ul style="list-style-type: none"> <li>• Facility design</li> <li>• Operations SPCC Plan</li> <li>• Spill Contingency Plan</li> </ul>

**Table A-6 Summary of VMC 14.26.120-A – Minimum Requirements Applicable to the Proposed Facility**

VMC 14.26.120 Requirement	Method of Compliance
3. Hazardous Material Releases: All hazardous materials that have been released shall be contained and abated immediately, and the hazardous materials shall be recycled or disposed of properly. The City shall be notified of any release of hazardous materials that would clearly impact water resources, as soon as possible, but no later than 24 hours after the release. The Ecology Stormwater Manual provides applicable operational BMPs for spills of oil and hazardous substances.	<ul style="list-style-type: none"> <li>• Individual Industrial Stormwater Permit</li> <li>• Operations SPCC Plan</li> <li>• Spill Contingency Plan</li> </ul>
4. Oil-Water Separators: Oil-water separators shall be inspected, cleaned, and maintained, as stipulated in the Stormwater Manual. The City may allow an operation to modify the regularity of cleanouts if the operation can demonstrate to the City's satisfaction that the separator operates effectively at less frequent cleaning intervals.	<ul style="list-style-type: none"> <li>• Individual Industrial Stormwater Permit</li> <li>• Regular inspections</li> </ul>
5. Pesticide and Fertilizer Management: All pesticides, herbicides, fungicides, and fertilizers shall be applied and managed according to the applicable BMPs for landscaping and lawn/vegetation management in the Ecology Stormwater Manual, VMC 20.760 Shoreline Management Area, and VMC 20.740 Critical Areas Protection ordinance.	<ul style="list-style-type: none"> <li>• Individual Industrial Stormwater Permit</li> <li>• Operations SPCC Plan</li> </ul>
6. Stormwater Treatment Systems: Stormwater drainage systems and treatment facilities, including, but not limited to, catch basins, wet ponds and vaults, biofilters, settling basins, and infiltration systems, shall be cleaned and maintained by the responsible party designated in VMC 14.25.230 according to the applicable operational BMPs for the maintenance of stormwater, drainage, and treatment systems in the [Ecology] Stormwater Manual.	<ul style="list-style-type: none"> <li>• Individual Industrial Stormwater Permit</li> </ul>
7. Operation Closure: At the closure of an operation, all hazardous materials shall be removed from the closed portion of the operation and disposed of in accordance with local, state, and federal laws.	<ul style="list-style-type: none"> <li>• Decommissioning Plan</li> </ul>

City = City of Vancouver, BMP = best management practice, VMC = Vancouver Municipal Code, SPCC = Spill Prevention Contingency and Countermeasure, Ecology = Washington State Department of Ecology

**Water Resources Protection Ordinance (VMC 14.26)**

The City has designated the entire area within the City’s boundaries, including the proposed Facility site, as a critical aquifer recharge area specified by its Water Resources Protection Ordinance (VMC 14.26). The ordinance requires minimum standards to protect critical aquifers, establishes compliance standards for business and industry to manage hazardous materials, and creates special protection areas around City wellheads. The City requires a minimum setback distance of 1,900 feet for any bulk petroleum fuel operation from a municipal water supply well (VMC 14.26.100 and 115). However, the proposed Facility site is not located within 1,900 feet of such a well. Further, the definition of “petroleum fuel” in this regulation does not specify crude oil; it only includes refined products. As such, this regulation would not apply to the proposed Facility.

**A.4.1.3 Title 16, Fire**

**Fire Code (VMC 16.04)**

As required by the State Building Code Act (RCW 19.27), the City adopted by reference (VMC 16.04.010) the 2012 International Fire Code. The City Fire Marshal’s Office inspects facilities within the City to assess compliance with the International Fire Code, which includes standards for fire protection systems, hydrants, and water supply for fire suppression. To comply with the International Fire Code, a construction permit and a Fire Code Operational Permit would be required for the proposed Facility. Other codes and standards applicable to the proposed Facility that would reduce fire risks include those

codes and standards developed by/contained within the IBC, National Electrical Code, Oil Companies International Marine Forum, Factory Mutual Data Sheets, American Petroleum Institute, American National Standards Institute, International Safety Guide for Oil Tankers and Terminals, and American Society of Mechanical Engineers.

#### **Hazardous Material Regulatory Fees (VMC 16.40)**

VMC 16.40 established a Hazardous Material Regulatory and Emergency Preparedness Reserve Account within the Fire Department Fund. Fees are required to be paid into the account to obtain the hazardous material regulatory fee certificate required for hazardous material occupancy (as defined within VMC 16.40.010) within the City. The Hazardous Material Regulatory and Emergency Preparedness Reserve Account is used to defray the cost of providing hazardous material regulatory and emergency preparedness services, including the cost of providing hazardous material emergency response plan inspections, evaluations, and exercises; training of emergency response personnel; and acquisition, maintenance, and operation of emergency response equipment.

#### **A.4.1.4 Title 11, Streets and Sidewalks**

##### **Transportation Concurrency (VMC 11.70)**

VMC 11.70 requires reviewing projects that generate additional weekday pm peak hour vehicle trips for transportation impacts. Impacts are based on the performance of specific transportation corridors. Transportation corridors that the proposed Project may affect include SR 501 (Fourth Plain Boulevard to I-5) and Fourth Plain Boulevard (SR 501 to I-5). Both corridors are designated as Category 1 corridors. Between periodic measurements of corridor level of service (LOS), Category 1 transportation concurrency corridors are presumed to operate within an acceptable LOS and are not evaluated with each development application. However, the City tracks trips distributed to each corridor from approved developments. Where a substantial increase in approved trips in a Category 1 corridor LOS measurement occurs, the City may review the corridor's designation as a Category 1 corridor.

##### **Street and Development Standards (VMC 11.80)**

VMC 11.80 provides minimum standards for construction or improvements to public and private streets including driveway spacing and standards, while VMC 20.945 establishes standards for the provision of parking.

##### **Construction in Right-of-Way (VMC 11.90)**

The City's Traffic Study Guidelines provides detailed procedures for the development and processing of a traffic impact analysis in the City. As such, it references transportation concurrency regulations contained in the VMC. The Traffic Study Guidelines describe the required analyses, methods, and thresholds to be addressed in traffic studies.

#### **A.4.2 City of Vancouver Comprehensive Plan**

**Responsible Agency/Governing Body.** City of Vancouver

**Description.** The City's Comprehensive Plan was first adopted in 1994 and since that time has undergone two major revisions (2004 and 2011). This plan's intent is to present a clear vision for Vancouver's future over a 20-year planning horizon. This plan established a vision of a livable urban area with growth tied to the ability to provide services and a range of residential options, including more intensive development in urban centers. The Comprehensive Plan forms the policy foundation for the legislative enactment of specific zoning ordinances, and provides the overall long-term vision and policy direction for managing the built and natural environment in Vancouver and for providing necessary public facilities, including transportation infrastructure (City of Vancouver 2011).

Chapter 5 of the Comprehensive Plan, Public Facilities and Services, describes how roads, sewers, parks, and other public facilities will be provided. Consistent with the Growth Management Act, the comprehensive plan requires concurrency for transportation, water, and sewer services. For transportation planning, it involves the adoption of LOS standards to assess the impacts of development proposals. Projects exceeding the performance standard would be required to provide sufficient mitigation to achieve the performance standard (City of Vancouver 2011).

**Applicability.** This provides context for decision makers and for examining potential impacts of the proposed Facility in this EIS.

**EIS Resource Area(s).** Land and Shoreline Use, Transportation

#### **A.4.3 City of Vancouver Comprehensive Plan Policy PFS-23**

**Responsible Agency/Governing Body.** City of Vancouver

**Description.** Policy PFS-23 calls for the provision of water pressures and volumes necessary to support fire suppression hydrants and sprinkler systems, and for ensuring that the infrastructure to support water service is in place prior to or at the time of development.

**Applicability.** This provides context for decision makers and for examining potential impacts of the proposed Facility in this EIS.

**EIS Resource Area(s).** Public Services and Utilities

#### **A.4.4 City of Vancouver Shoreline Master Program**

**Responsible Agency/Governing Body.** City of Vancouver

**Description.** The City's current SMP was adopted in September 2012. In the proposed Project vicinity, SMP jurisdiction extends from the middle of the Columbia River landward for a distance of 200 feet from the ordinary high water mark, including floodways and floodplains 200 feet from such floodways, and all wetlands associated with the Columbia River (City of Vancouver 2012). These regulations include provisions for the protection of habitat used by fish species and generally require no net loss of shoreline ecological functions. The Proposed Action would be designed and operated to comply with these regulations.

In addition, regulations in Section 5.8 of the City Shoreline Master Program address aesthetics and views of shoreline areas in Vancouver. These regulations promote maintenance of visual access to shoreline and avoidance of impacts to existing views of the water from adjacent property. Specific regulations pertain to buildings greater than 35 feet in height and prohibit the construction of buildings greater than 35 feet in height if they obstruct views of a substantial number of residences on adjoining lands.

**Applicability.** This provides context for decision makers and for examining potential impacts of the proposed Facility in this EIS.

**EIS Resource Area(s).** Aquatic Species, Land and Shoreline Use, Visual Resources

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