



Washington State Energy Facility Site Evaluation Council AGENDA

MONTHLY MEETING
Tuesday, August 18, 2015
1:30 PM

1300 S Evergreen Park Drive SW
Olympia, WA 98504
Hearing Room 206

- 1. Call to Order Bill Lynch, EFSEC Chair
- 2. Roll Call Tammy Mastro, EFSEC Staff
- 3. Proposed Agenda Bill Lynch, EFSEC Chair
- 4. Minutes **Meeting Minutes**..... Bill Lynch, EFSEC Chair
 - July 21, 2015
- 5. Projects **a. Kittitas Valley Wind Project**
 - Operational Update..... Eric Melbardis, EDP Renewables**b. Wild Horse Wind Power Project**
 - Operational Update..... Jennifer Diaz, Puget Sound Energy**c. Grays Harbor Energy Center**
 - Operational Update..... Rich Downen, Grays Harbor Energy**d. Chehalis Generation Facility**
 - Operational Update..... Mark Miller, Chehalis Generation Staff**e. Columbia Generating Station**
 - Operational Update..... Shannon Khounnala, Energy Northwest**f. WNP - 1/4**
 - Non-Operational Update..... Shannon Khounnala, Energy Northwest**g. Tesoro/Savage Vancouver Energy Distribution Terminal**
 - Project Update..... Sonia Bumpus, EFSEC Staff
- 6. Action Items **a. Enforcement Policy Adoption**
 - Activity Update..... Bill Lynch, EFSEC Chair

*The Council may consider and take **FINAL ACTION** on adoption of a penalty policy and procedure*
- 7. Other **a. EFSEC Council**
 - Legislation Update Bill Lynch, EFSEC Chair
 - Rules Update..... Bill Lynch, EFSEC Chair
- 8. Adjourn Bill Lynch, EFSEC Chair

Note: "FINAL ACTION" means a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance. RCW 42.30.02

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4 WASHINGTON STATE
5 ENERGY FACILITY SITE EVALUATION COUNCIL
6 Richard Hemstad Building
7 1300 South Evergreen Park Drive Southwest
8 Conference Room 206
9 Olympia, Washington
10 Tuesday, July 21, 2015
11 1:31 p.m.

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15 MONTHLY COUNCIL MEETING
16 Verbatim Transcript of Proceeding

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A P P E A R A N C E S

Councilmembers Present:
 Bill Lynch, Chair
 Joe Stohr, Department of Fish and Wildlife
 Dan Siemann, Department of Natural Resources
 Dennis Moss, Utilities and Transportation Commission

Local Government and Optional State Agency:
 Bryan Snodgrass, City of Vancouver (via phone)
 Ken Stone, Department of Transportation
 Greg Shafer, Clark County
 Larry Paulson, Port of Vancouver

Attorney General's Office:
 Ann Essko, Assistant Attorney General

Staff in Attendance:
 Stephen Posner
 Jim LaSpina
 Tammy Mastro
 Sonia Bumpus
 Cassandra Noble
 Kali Wraspir
 Joan Aitken

Guests in Attendance:
 Jay Derr, Van Ness Feldman
 Kelly Flint, Grays Harbor
 Richard Downen, Grays Harbor Energy

Guests in Attendance Via Phone:
 Eric Melbardis, EDP Renewables, Kittitas Valley
 Shannon Khounnala, Energy Northwest
 Grant Bailey, Golder Associates
 Karen McGaffey, Perkins Cole

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OLYMPIA, WASHINGTON, JULY 21, 2015
1:31 P.M.
-000-

CHAIR LYNCH: Good afternoon. Today is July 21st, 2015, the regular July Council meeting of the Energy Facility Site Evaluation Council.
 Could we please have the Clerk call the role?
 MS. MASTRO: Department of Commerce.
 CHAIR LYNCH: Excused.
 MS. MASTRO: Department of Ecology?
 CHAIR LYNCH: Excused.
 MS. MASTRO: Fish & Wildlife?
 MR. STOHR: Joe Stohr is here.
 MS. MASTRO: Department of Natural Resources?
 MR. SIEMANN: Dan Siemann here.
 MS. MASTRO: Utilities and Transportation Commission?
 MR. MOSS: Dennis Moss is here.
 MS. MASTRO: Local governments and optional state agencies. Department of Transportation?
 MR. STONE: Ken Stone is here.
 MS. MASTRO: The City of Vancouver?

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MR. SNODGRASS: Bryan Snodgrass on the phone.
 MS. MASTRO: Clark County?
 MR. SHAFER: Greg Shafer present.
 MS. MASTRO: Port of Vancouver?
 MR. PAULSON: Larry Paulson here.
 MS. MASTRO: Chair, there is a quorum.
 CHAIR LYNCH: Thank you, Ms. Mastro.
 If I could have the councilmembers just take a brief look at the proposed agenda today to see if they have any proposed additions.
 Hearing none, let's go ahead and -- before we move to approval of the minutes, I would like to give those people who are on the line the opportunity to identify themselves if they choose to.
 MS. KHOUNNALA: Shannon Khounnala, Energy Northwest.
 MR. BAILEY: Grant Bailey with --
 CHAIR LYNCH: I'm sorry, that last person, do you mind saying that a little more clearly, please?
 MR. BAILEY: Yeah, Grant Bailey with Golder Associates.
 CHAIR LYNCH: Excuse me, is it Grant Bailey?

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1 MR. BAILEY: Yes.

2 CHAIR LYNCH: And I'm sorry, who did you

3 say you are with?

4 MR. BAILEY: Golder.

5 CHAIR LYNCH: Oh, Golder, yes. Thank

6 you.

7 MS. McGAFFEY: Karen McGaffey, Perkins

8 Coie.

9 CHAIR LYNCH: Okay. Let's move on.

10 Would the Council please take a look at the

11 June meeting minutes. If there are no suggested

12 corrections, I will entertain a motion for their

13 adoption.

14 MR. STOHR: Mr. Chair, I move we approve

15 the June 16th meeting minutes.

16 CHAIR LYNCH: Do we have a second?

17 MR. MOSS: I will second that.

18 CHAIR LYNCH: It's been moved and

19 seconded that the Council approve the meeting minutes

20 from June 16th meeting. All those in favor say "Aye."

21 MULTIPLE SPEAKERS: Aye.

22 CHAIR LYNCH: Opposed?

23 Motion carries.

24 Let's go ahead and move into the updates from

25 our regulated facilities. First of all, Kittitas

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1 Valley Wind Power Project.

2 MR. MELBARDIS: Good afternoon, EFSEC

3 Council, Chair Lynch. This is Eric Melbardis with EDP

4 Renewables for the Kittitas Valley Wind Power Project.

5 We have nothing nonroutine to report.

6 CHAIR LYNCH: Thank you, Mr. Melbardis.

7 Any questions from councilmembers regarding

8 the Kittitas Valley Wind Project?

9 Thank you. Those are the reports that we like

10 to hear.

11 And can we have an update now from Wild Horse

12 Wind Power Project?

13 Ms. Diaz or someone else from Wild Horse

14 on the line?

15 Mr. LaSpina, you have looked at their

16 submission. It looks like they have nothing to

17 report.

18 MR. LASPINA: It's the pink sheet in

19 your pockets. They apparently have no nonroutine

20 events to report.

21 CHAIR LYNCH: Okay. Thank you.

22 I see Mr. Downen is here for Grays Harbor

23 Energy Center. Welcome.

24 MR. DOWNEN: Thanks, Chair Lynch.

25 Welcome yourself. Council and Staff, it's good to see

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1 everybody. Sunny weather, it cheers us all up. I'm

2 not used to it here.

3 For Grays Harbor Energy, the month of June,

4 the only things that are not routinely reported,

5 there's a few of them. The reference to the annual

6 outfall inspection and functional testing that we

7 performed, we perform that every summer, the

8 notification of EFSEC of the issue that we had with

9 our pH instrument. I talked about that last -- at the

10 last meeting and we are discussing that with EFSEC

11 Staff. We report here that we made the notifications

12 to them.

13 And then the ongoing communications that we've

14 got with all the affected regulatory parties with

15 regards to our PSD revision, that is still ongoing.

16 And also, the affected parties for the engineering

17 report, and that's still ongoing, although I believe

18 both of them are making some progress. That's good

19 news, I think.

20 And the only other thing of note is -- all the

21 way at the bottom, is regarding the installation of

22 noise monitoring equipment. That project is ongoing.

23 The noise monitor has been purchased, is on site, and

24 we are in the process of doing all of the intangibles,

25 like run power to it and get the communications set up

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1 so that it will communicate directly and be recorded

2 in the DCS that controls the plant, so that's moving

3 along.

4 CHAIR LYNCH: Excellent. We are very

5 happy to hear about the -- how the noise monitoring

6 equipment being installed is moving along.

7 And as Mr. Downen noted, one incident he

8 reported on last month is still under investigation,

9 so we're not going to ask him questions about that

10 today. Is there any other questions for Mr. Downen?

11 Thank you.

12 MR. DOWNEN: All right. Thank you.

13 CHAIR LYNCH: Columbia Generating

14 Station. Ms. Khounnala?

15 MS. KHOUNNALA: Yes, this is Shannon

16 Khounnala with Energy Northwest for the Columbia

17 Generating Station operational status update. We are

18 back online at 64 percent and we are producing 683

19 megawatts. We returned from our outage back to online

20 operations on June 28th, at the end of last month.

21 As you will see in your report that is

22 provided to the councilmembers there, during our

23 process to return to full power following our outage,

24 Columbia did encounter some difficulties with one of

25 our reactor feed water valves. We did perform some

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1 troubleshooting on that valve and determined that
 2 there was an internal component that is stuck within
 3 the valve. So while we only have one of the pumps
 4 operating as designed, we are limited to online
 5 operations of approximately 65 percent.
 6 So following this discovery, we thoroughly
 7 vetted a repair option and plan, brought a specialty
 8 contractor to the site, and began working with them
 9 after the July 4th holiday. Repairs were put into
 10 place last week and continue into this week, so that
 11 effort is ongoing. Our plan is to remain at just less
 12 than 65 percent power as we complete that repair plan.
 13 While that reactor feed water valve issue did
 14 pose a -- posed a temporary hurdle to bringing us back
 15 to 100 percent power, we do consider our refueling
 16 outage to be very successful. We completed over 2,000
 17 maintenance orders during the outage.
 18 A couple of the big activities of note during
 19 this outage is, we did some long-anticipated
 20 maintenance on our main generator, and we also
 21 replaced three of our four main transformers with new
 22 units. Those were big efforts that were long
 23 anticipated.
 24 And while we bring on an additional 1200 to
 25 1500 people to support the outage here, we were able

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1 to complete that outage without any reportable or lost
 2 time injuries.
 3 Outside of those details, we don't have any
 4 other events or safety incidents or regulatory issues
 5 to report.
 6 CHAIR LYNCH: Ms. Khounnala, before we
 7 take Board questions, Council questions, just go ahead
 8 and continue with your update for WNP 1 and 4.
 9 MS. KHOUNNALA: Sure. The update for
 10 WNP 1 and 4 has not changed from the update provided
 11 in June. That summary is actually identical, that we
 12 continue to just focus our efforts with the Department
 13 of Energy on the work needed to complete the NEPA
 14 environmental assessment. We will be in this process
 15 for a number of months. So no additional details.
 16 CHAIR LYNCH: Thank you.
 17 Any questions for Ms. Khounnala, either the
 18 Columbia Generating Station or WNP 1 and 4?
 19 Mr. Stohr?
 20 MR. STOHR: Good afternoon,
 21 Ms. Khounnala, Mr. Stohr with Fish & Wildlife.
 22 MS. KHOUNNALA: Good afternoon.
 23 MR. STOHR: Do you have any sense of why
 24 or how did the internal component get stuck within the
 25 discharge valve? That's question one. And then the

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1 other is when do you anticipate the repair being
 2 completed?
 3 MS. KHOUNNALA: Sure. As far as the
 4 actual why of -- why or how the internal component was
 5 stuck, I -- you know, I don't have an answer to that.
 6 I could research that and vet that back through staff
 7 to get that to you for an official technical reason
 8 for why.
 9 In terms of the repair, coming back online, we
 10 are receiving at this time daily updates. The
 11 contractors are actually performing the work. I know
 12 they are busy working on that today. We took
 13 significant time after -- once the contractor was on
 14 site, to run through mock trials, as well as the
 15 planning component of that repair, so that took
 16 significant time.
 17 And now, as of the start of this past week --
 18 weekend, excuse me, and into this week, we are
 19 performing the physical work. So the anticipated
 20 date, day or time is unknown, but that work is being
 21 performed as we speak.
 22 CHAIR LYNCH: Thank you, Ms. Khounnala.
 23 We are going to have some other questions, but if you
 24 could get back to the Council next time with some
 25 information on why that particular component got stuck

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1 in the first place, in order to close the loop.
 2 MS. KHOUNNALA: Yes, will do.
 3 Thank you.
 4 CHAIR LYNCH: Mr. Moss?
 5 MR. MOSS: (Shakes head.)
 6 CHAIR LYNCH: No? Okay.
 7 Thank you.
 8 There's no more questions for Ms. Khounnala.
 9 I believe I skipped over the Chehalis
 10 Generating Facility. Mr. Miller. Mr. Miller's report
 11 is the light blue report right here. There were no
 12 incidents to report.
 13 I will confirm that with Mr. LaSpina of Staff.
 14 Is that correct?
 15 MR. LASPINA: Yes, sir, that's true.
 16 CHAIR LYNCH: Okay. And now we will
 17 move forward with our Tesoro/Savage Vancouver Energy
 18 Distribution Terminal update.
 19 Ms. Bumpus.
 20 MS. BUMPUS: Thank you.
 21 Good afternoon, Chair Lynch and
 22 councilmembers. I am going to start with a couple of
 23 project updates relative to the permits, and then I
 24 will be covering some updates on DEIS following all
 25 the permits.

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1 For the stormwater NPDES construction permit,
 2 on June 23, 2015, EFSEC staff provided review comments
 3 to the applicant, requesting additional information.
 4 Further review is pending, receipt of the information
 5 EFSEC has requested for that permit.
 6 For the NPDES industrial permit, EFSEC Staff
 7 continued to coordinate with EFSEC's contractors at
 8 Ecology. We are reviewing comments and we are
 9 preparing to send information to the applicant on that
 10 review.
 11 For the NOC air permit, there aren't any new
 12 updates to provide at this time. We are continuing to
 13 work with the Ecology contractor on developing that
 14 draft permit, and I will continue to keep you apprised
 15 of new information as we move forward with that
 16 process.
 17 Are there any questions on those three
 18 permits?
 19 CHAIR LYNCH: Any questions for
 20 Ms. Bumpus regarding the permits?
 21 Please continue.
 22 MS. BUMPUS: Okay. So this is just the
 23 last thing I wanted to mention before leaving the
 24 permits, the 401 water quality certification. Last
 25 month, councilmembers recall during the June meeting

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1 there was a copy of the U.S. Army Corp of Engineers
 2 letter regarding their revised permit application
 3 evaluation procedures. The Corps' decision to
 4 undertake an individual permit evaluation triggers
 5 individual 401 review, which includes conducting a
 6 public comment period. On July 2nd, EFSEC and the
 7 Corp issued a joint public notice, and that notice is
 8 provided in a hard copy in your packets. It's also
 9 available on the EFSEC website. That comment period
 10 began July 2nd and ends on August 1st.
 11 And that's all I have to update on the 401.
 12 CHAIR LYNCH: Regarding the -- excuse
 13 me, Ms. Bumpus, but regarding this joint public
 14 notice, my understanding is if somebody wants to
 15 comment on the Corp 404 permit, they contact the Corp
 16 at their site and if they want to comment on the 401
 17 certification they comment to us; is that correct?
 18 MS. BUMPUS: Correct.
 19 CHAIR LYNCH: Thank you.
 20 MS. BUMPUS: All right. So moving on to
 21 the DEIS update. In your packets there is a hard copy
 22 of the DEIS schedule that was revised shortly after
 23 last month's Council meeting. Cardno is on track to
 24 meet this schedule, and they are continuing to work on
 25 the document.

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1 There are a couple of things I wanted to point
 2 out about the schedule, as we are looking at it. Just
 3 to note that on November 24th, 2015, that's the new
 4 target date for publishing of the DEIS. The other
 5 thing I wanted to point out is the time frame for
 6 Staff's first review of the DEIS. The first review,
 7 that includes looking at the document in a
 8 comprehensive form from August 12th to September 1st.
 9 It's about 11 lines up from the bottom. This is when
 10 Staff is proposing to provide the document in draft
 11 form for Council's early preliminary review.
 12 CHAIR LYNCH: So my understanding is
 13 that instead of the Council getting individual
 14 chapters to review, they will be getting a fairly
 15 completed draft EIS. And what date will they be
 16 receiving this, then?
 17 MS. BUMPUS: They would receive it on
 18 August 12th, 2015.
 19 CHAIR LYNCH: Okay. So the Council gets
 20 that on August 12th, 2015, and they would have their
 21 comments in by October 14th; is that correct? Or when
 22 is it those would have to be in?
 23 MS. BUMPUS: For the review period, from
 24 August 12th to September 1, that first preliminary
 25 review, we wouldn't expect councilmembers to provide

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1 comments during that time, but they would during their
 2 next review cycle, which would be October 14th to
 3 November 10th.
 4 CHAIR LYNCH: So the Council would have
 5 until November 10th to get comments to Staff?
 6 MS. BUMPUS: Right, between October 14th
 7 and November 10th would be that second review cycle.
 8 CHAIR LYNCH: Oh, I see. So what you
 9 are saying is, is that the councilmembers will have
 10 the document to review, but you would only be really
 11 getting their comments between October 14th and
 12 November 10th.
 13 MS. BUMPUS: Correct.
 14 CHAIR LYNCH: Okay.
 15 MS. BUMPUS: The August 12th to
 16 September 1st time frame is the same time that Staff
 17 would be reviewing it. It would just be that
 18 opportunity, an early opportunity, for you to look at
 19 the document, familiarize with that document before
 20 you do your review starting in October.
 21 CHAIR LYNCH: Now I understand.
 22 Thank you.
 23 Do you have anything else?
 24 MS. BUMPUS: If councilmembers don't
 25 have any questions, that's everything.

1 CHAIR LYNCH: Mr. Stohr?
 2 MR. STOHR: Thanks.
 3 Looking at the term "legal review comments,"
 4 could you describe that for me? Does that have any --
 5 MS. BUMPUS: Sure.
 6 MR. STOHR: -- the AG's office take a
 7 look or --
 8 MS. BUMPUS: Correct.
 9 MR. STOHR: Okay.
 10 CHAIR LYNCH: Any other questions for
 11 Ms. Bumpus?
 12 Thank you.
 13 MS. BUMPUS: Thanks.
 14 CHAIR LYNCH: And, Mr. Posner, do you
 15 want to update us on BP Cherry Point?
 16 MR. POSNER: Yes.
 17 Good afternoon, Chair Lynch, councilmembers.
 18 In your packets is a copy of a letter from BP Cherry
 19 Point. I'm trying to locate it now. I can't -- I
 20 don't know what color it is, but it is in there. It's
 21 white.
 22 It's a short letter and it describes --
 23 basically, the letter -- we sent a letter to the
 24 facility inquiring about the status of the project,
 25 because the SCA, Site Certification Agreement, and our

1 rules state that if a certificate holder does not
 2 start construction within ten years of the effective
 3 date of the SCA, the SCA shall expire. So it has been
 4 ten years. It was -- December 21st, 2014, was when
 5 the -- the effective date of the SCA. We just wanted
 6 to make sure that the -- the certificate holder had an
 7 opportunity to communicate with us about their
 8 intentions and they did by sending this letter.
 9 This is for informational purposes, to
 10 councilmembers, to let you know that BP Cherry Point
 11 cogeneration project is officially cancelled and they
 12 will be taken off our books, if you will, in terms of
 13 any charges that they might get. They have been, for
 14 the last several years, getting -- there has been some
 15 minor work, but -- some of our indirect costs have
 16 been charged to them, very minor. Starting July 1st
 17 this year, you won't see them anymore on the updates,
 18 as far as the indirect rates.
 19 That's all I have.
 20 CHAIR LYNCH: Any questions for
 21 Mr. Posner about the BP Cherry Point termination?
 22 Okay. Very good. And now here's an item I am
 23 particularly excited about, not just because it
 24 involves Mr. LaSpina, but it is the air rules
 25 adoption. Mr. LaSpina.

1 MR. LASPINA: Thank you, Chair Lynch.
 2 Good afternoon, Chair Lynch and
 3 councilmembers. In each of your packets is a briefing
 4 memo on white paper. It is pretty comprehensive.
 5 Hopefully, you have had a chance to look at it. I am
 6 going to read off some of the highlights of that memo.
 7 And this involves the updating of EFSEC's main air
 8 quality rule, Chapter 463-78 WAC.
 9 So the rulemaking process implements a
 10 statutory update for consistency between EFSEC and
 11 Ecology rules and compliance with the federal
 12 regulations. This rulemaking, adopted by reference,
 13 existing Ecology rules and existing federal
 14 performance standards that may apply to potential
 15 EFSEC projects in the future. This rulemaking
 16 utilized the expedited rulemaking process.
 17 The proposed revision was published in the
 18 state register on May 20th, 2015, and was the
 19 beginning -- that date was the beginning of a 45-day
 20 public comment period, which is required by the
 21 expedited rulemaking process. Also, this process
 22 included SEPA review, and public notice was published
 23 in the Olympia newspaper. Notices were sent to 436
 24 people on two EFSEC interested parties lists. Also,
 25 the Environmental Protection Agency and the Tribes

1 received notices. No public comments were received.
 2 So in summary, EFSEC Staff recommends the
 3 Council approve the proposed rule for adoption today.
 4 I would be happy to answer any questions or concerns
 5 at this time.
 6 CHAIR LYNCH: And before taking
 7 questions, just to add on to what Mr. LaSpina said,
 8 the rules were sent previously to the councilmembers
 9 as part of an e-mail package. We have been working
 10 closely with the Department of Ecology, and because
 11 these are just adopting their existing provisions by
 12 reference, we are using the expedited process.
 13 This is a really important step in us
 14 submitting an eventual SIP, State Implementation Plan,
 15 to EPA. If we get EPA's approval of that document, we
 16 will be in the position to issue our own air permits,
 17 as opposed to having joint issuance of permits between
 18 us and EPA. It will save a lot of money and a lot of
 19 time.
 20 Any questions for Mr. LaSpina?
 21 So at this point in time I would entertain a
 22 motion to adopt the proposed air rules.
 23 MR. MOSS: Chair Lynch, I would move
 24 that the Council approved the proposed revisions to
 25 EFSEC's air quality rule as presented today by Staff.

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1 CHAIR LYNCH: Do we have a second?
 2 MR. STOHR: I will second.
 3 CHAIR LYNCH: It's been moved and
 4 seconded that we adopt the proposed air rules as
 5 described by Staff. Is there any further discussion?
 6 MR. MOSS: I would just like to say,
 7 Chair Lynch, I think this is an important move forward
 8 for the Council, and that it will promote efficiency
 9 and be in the public interest that we have these
 10 revisions in place. My compliments to the Staff for
 11 their hard work.
 12 CHAIR LYNCH: Thank you, Mr. Moss. And
 13 my compliments to our Staff and Ecology Staff both.
 14 It was a good joint effort to pull this together. And
 15 if we do get that SIP approval from EPA, we are going
 16 to have ice cream cake right here in our council
 17 chambers. I think Mr. LaSpina agreed to provide the
 18 ice cream cake.
 19 And now I will call for the question. All
 20 those in favor say "Aye."
 21 MULTIPLE SPEAKERS: Aye.
 22 CHAIR LYNCH: Opposed?
 23 Motion adopted.
 24 Thank you very much.
 25 Now we are going to move on to the revised

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1 penalty guidance. We will not be taking action on
 2 this today, but I wanted to discuss it briefly with
 3 the councilmembers. This is a document basically a
 4 year and a half in the making. I was working on it
 5 from time to time, but then events would happen and
 6 then I would get pulled away from it.
 7 The reason for this -- you have actually three
 8 documents in front of you. The first is the overall
 9 guidance document, then you have a gravity criteria
 10 scoring worksheet, and gravity criteria notes. The
 11 reason for this is that when -- it's good to have some
 12 objective way of assessing a penalty when a violation
 13 occurs. That's what this -- these documents would be
 14 doing.
 15 When I was on the Pollution Control Hearings
 16 Board, this is what we regularly got when there was a
 17 violation of an Ecology permit or a permit from a
 18 local air authority. You could see not only what
 19 their proposed penalty was, but how they arrived at
 20 that particular penalty. I was a little surprised,
 21 when I came here, that there wasn't something like
 22 this in place, so -- but this is -- this effort is to
 23 make sure that we have something like this in place.
 24 And what I -- and it's -- if you were to
 25 actually do some comparisons, you would actually see,

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1 this is very similar to the matrix that is used by the
 2 Department of Ecology air program. In fact, it is
 3 virtually identical to that program. I looked at the
 4 UTC process, I looked at Ecology's water quality
 5 program, Ecology's air quality program, I think it was
 6 a Board of Industrial Insurance Appeals, I looked at
 7 something else. Because these are in fact
 8 environmental violations that would be occurring, it
 9 seemed that there was a lot more in common with
 10 Ecology's proposed enforcement guidance, and so that's
 11 why I am recommending that.
 12 One of the things I particularly liked about
 13 their guidance is that you would -- it really is very
 14 objective, that you go -- if you were to look at the
 15 gravity criteria score sheet, for example, you would
 16 see that what there is, is there -- you go through --
 17 if there is in fact a violation, you go through the
 18 checklist and for each question you assign points.
 19 Number one, "Did the violator know, or reasonably
 20 should have known, about the requirement?" Yes, five
 21 points; no, zero points.
 22 What you do is you walk through all of these
 23 questions. And at the end you go a total score, and
 24 then you look at how that total score translates into
 25 a proposed penalty on the penalty matrix.

Page 24

1 For example, if you had four to six points,
 2 that would equal a penalty of \$1,000. That would be
 3 the recommended penalty.
 4 And I should point out that how this matrix
 5 would work is that is a per penalty per day proposed
 6 violation, and that would be the maximum violation.
 7 But then -- so you could not, for example, have a
 8 proposed penalty of \$3,000, and then the Council say,
 9 well, we just don't like those guys and then propose a
 10 penalty of \$5,000. The \$3,000 penalty would be the
 11 maximum that the Council could impose per day, per
 12 violation.
 13 And as the larger document, the enforcement
 14 guidance, makes clear, is that those are just a --
 15 that's just a recommended penalty. It's important to
 16 remember what is the -- the real reason behind a
 17 penalty statute, and that is to encourage compliance
 18 with the law and to have a level playing field. And
 19 so if, for example, you would have a small violation,
 20 and it was just the first time for a particular
 21 facility, instead of imposing the maximum violation
 22 that you could impose, you might decide to reduce the
 23 amount of the penalty because you think that the
 24 purposes of enforcement are being achieved with a
 25 lesser penalty. I like the idea of you are using your

1 discretion at the end of the scoring process, as
2 opposed to exercising discretion within every element
3 of every question.

4 And then the gravity criteria notes that
5 accompany the scoring sheet, you will see that if you
6 are having -- would like a little more guidance to how
7 a question should be answered, you would be -- you
8 would look at that particular document and that would
9 help you answer that question.

10 And then that's only for the -- as most of you
11 know, a penalty is composed of two different
12 components. There's the gravity component, as in you
13 did something wrong, and depending how serious that
14 violation was, we're going to impose a penalty on you.

15 And the second is the economic benefit
16 component. And that is, you want to make sure that
17 you always recover the economic benefit component. I
18 don't know of any regulatory authority that does not
19 recover the economic benefit component.

20 Let's say, for example, a facility was not
21 doing monitoring because they thought, well, we can
22 save a few bucks by not doing this monitoring. Well,
23 you want to make sure that you recover the cost of
24 what that monitoring would have been. You don't want
25 entities that are in fact obeying the law being put at

1 a disadvantage by their competitors who don't obey the
2 law. So that's just how all of that comes together.

3 You are welcome to take a look at this and --
4 oh, and one very important point about the penalty
5 matrix is, this was put together in anticipation of
6 our legislation passing this session, which I will get
7 to later, which increased -- increased EFSEC's penalty
8 authority from \$5,000 per violation per day up to
9 \$10,000 per violation per day, which makes us
10 consistent with Ecology. Ecology has had that same
11 level of penalty since 1985. We are just catching up
12 to them now.

13 Any violations that occurred before the
14 effective date of our legislation, which is
15 October 9th of this year, would -- again, like I said,
16 we just -- penalty authority just increased from
17 \$5,000 per day per violation to \$10,000 per day per
18 violation. If you were trying to score how much a
19 penalty should be assessed based on any penalty before
20 this -- before our law took effect, you would
21 essentially run it through the penalty matrix. If it
22 was a penalty that would -- looks like it would be at
23 a level of \$4,000, you would have to cut it in half,
24 because we aren't authorized to impose penalties up to
25 \$10,000 per day. We are essentially halving the

1 penalty amount for those particular violations.

2 And I know you are just probably wanting to
3 think about this more at the moment than anything.
4 But if you have any questions, I am happy to take
5 those now.

6 Mr. Stohr?

7 MR. STOHR: Yes, Mr. Chair, I have used
8 something like this a number of times in my career.
9 This is very helpful, I think, to both feel like you
10 are thorough and fair and you have a strong
11 explanation as to why you made the choices that you
12 made.

13 One point I don't see on here, and it probably
14 isn't in the criteria itself, but I know at times it
15 comes up is some -- some sense of discretion, when you
16 have a chronic, fairly minor release versus a
17 catastrophic major release or incident. Perhaps that
18 doesn't even need to be stated, but I know at times it
19 was -- it was always good to go back and look at
20 the -- not only the history of the facility in terms
21 of violations, but also to look at the history of the
22 agency or other agencies as they dealt with various
23 scenarios and settings, and to allow yourself some
24 discretion to gauge the penalty you land on, depending
25 on those factors.

1 Just an observation.

2 CHAIR LYNCH: Part of what you said is
3 in here, Mr. Stohr. In fact, if you were to turn to
4 Page 4 of the enforcement guidance, that is "Council
5 Discretion on Gravity Component of Penalty."

6 After you are looking -- after you have put
7 together a proposed penalty by using the matrix,
8 the -- typically, what a regulating entity will do is
9 look at three main factors, and that's the seriousness
10 of the violation, the prior behavior of the violator,
11 and subsequent actions taken to rectify the problem.
12 Then as part of the questions that you go through,
13 there is a -- when you are scoring you do look at,
14 does the violator have a history of violations, and
15 then you have questions related to the seriousness of
16 the violation.

17 Again, if it's a paperwork violation it's
18 still a permit violation, but that's much different
19 than if you had a fish kill, for example, from a
20 facility, which is much more serious, if you have harm
21 to public health, safety or the environment.

22 So your thoughts are well taken about
23 comparing other penalties from other places, so that's
24 something to think about as well.

25 Any other questions or comments from

1 councilmembers?
2 I'm sure when you are with this document a
3 little bit more, you will have some more questions or
4 thoughts about it.

5 Now I would like to move on. So we're not
6 taking final action on that today. What I would like
7 to turn to now is just our legislative update. Our
8 request bill, Senate Bill 5310, did pass the
9 legislature, and it passed it in one evening. Talk
10 about lots of excitement in one evening. We thought
11 we were -- in fact, I had just about given it up. I
12 did one last Hail Mary call to a senator. I was about
13 ready to shut down my office, it was about 5:30 at
14 night, and I saw on the senate floor our bill was the
15 next bill up. And so then -- in fact, I picked up the
16 phone and I dropped it. I said, I needed to quick
17 call some House people.

18 And so we got the bill through the Senate and
19 we got the bill through the House all in one evening.
20 We are very pleased about that. The governor signed
21 it. It takes effect October 9th.

22 It's good to have our penalties consistent
23 with Ecology's penalties. It updated a number of our
24 other statutes regarding enforcement.

25 One of the key things, and what I was really

1 modular nuclear reactors in this state. We have been
2 doing some work trying to get that up and going. We
3 have to have a few more conversations first, but you
4 can tell there is a lot of interest in that particular
5 proposal.

6 And also, unfortunately, we have already
7 gotten a memo from the governor's office to start
8 working on your 2016 legislation, and the ink isn't
9 even dry on the bill that was just signed. I
10 anticipate us submitting two different bills to the
11 governor's office for the 2016 session. One is a bill
12 that's just a more technical bill regarding our
13 deposits and assessments. That was actually -- we had
14 a bill doing that in 2014. It passed the House, if
15 not unanimously, near unanimously. It died in the
16 Senate.

17 I was going to resubmit it in 2015, but I
18 realized that there was a small tweak we needed to do,
19 and I didn't realize it until the end of December. I
20 didn't want to surprise all of our stakeholders with,
21 oh, and there's a little change here, don't you worry
22 your pretty little heads about. So I thought that was
23 jamming them a little bit too much, so I thought it
24 would be better to hold off until the 2016 session.
25 But it is a fairly small tweak. Everyone has pretty

1 pushing on legislators at the end, was that in order
2 to get delegation from EPA to -- and particularly for
3 what we were looking to do for our air permit,
4 issuance of air permits -- federal law requires that
5 you have the same enforcement authority as the EPA
6 administrator. Ecology had that authority but we did
7 not. So we ran the danger of doing all of this work
8 to update our SIP and then basically we couldn't even
9 submit it if we didn't even meet that basic criteria.

10 So by having that bill, Senate Bill 5310 pass
11 the legislature this session, and having these rules
12 adopted today, we are pretty far home, on the way to
13 getting that SIP being submitted to Ecology.

14 What is left? There is a handful of rules
15 that we still need to tweak a little bit, talk to EPA
16 about. There is a rule adoption that Ecology, I
17 believe, is going through in January regarding some
18 new EPA requirement, and we will piggyback onto that.
19 Then I believe we are just about ready to submit the
20 SIP. This will be just a major, major action on our
21 part.

22 And one other thing that passed during the
23 2015 session that pertains to EFSEC, is there was a
24 budget proviso that said EFSEC shall either study or
25 hire a contractor to study the siting of small,

1 much seen it before, so I am hoping that will go
2 through.

3 But the second one is a much bigger project,
4 and that is some changes to our siting process itself.
5 What I'm looking at doing -- well, as many of you
6 know, there are some bumps in our process which don't
7 necessarily need to be there in order to have an
8 efficient process. One of the things that you may
9 recall is the Quinault Tribe asked for declaratory
10 order this fall regarding whether we had jurisdiction
11 over the Grays Harbor proposed facilities. They asked
12 for a declaratory order. It turns out we didn't have
13 authority to issue a declaratory order because
14 objections were filed to that.

15 The reason our jurisdictional statute is
16 problematic is because it contains in the definition
17 the words "capacity to receive." Capacity to receive.
18 Is the threshold 50,000 barrels per day? Yeah. So
19 the -- that's one of our jurisdictional thresholds.

20 So capacity to receive is not an industry
21 term, it's not defined in our statutes, we don't have
22 any WACs defining it, so what does that mean? So what
23 happens is a facility isn't sure whether they come
24 under our jurisdiction or not. They contact our
25 Staff. We ask for engineering information. There's

1 back and forth. There's decisions that have to be
2 made about, well, gosh, how quickly can you unload
3 these tankers? What's -- you know, lots of all of
4 these questions. And then you make your best
5 decision. Why do we have to be that hard?

6 The State of New York, for example, just looks
7 at storage capacity. If we had a storage capacity
8 limit, you just say, what's the storage capacity, end
9 of story. It's pretty easy. That's one of the
10 things, I would like to take out the stakeholders and
11 see what their thoughts are about that. That would be
12 a lot easier.

13 Another thing I would like to see is us to
14 adopt a preapplication process. Preapplication
15 process is used by virtually every unit of local
16 government. It really helps parties understand what
17 is expected of them if you don't have your clock
18 started for approval until an application is deemed
19 complete. And I think it would go a long way for
20 people to understand what information they need to
21 provide.

22 Again, using New York as an example. I just
23 happened to look at their site and they recently put
24 in a preapplication process, and it's getting some
25 pretty good kudos. New York has a very detailed

1 environmental set of requirements that need to be met.
2 And part of the reason they went to this
3 preapplication process was to help with that,
4 recognizing they had a detailed environmental process
5 that needed to be met, and they thought this
6 preapplication would assist in that.

7 I can only see good things coming from such a
8 thing like that, but there's a number of other little
9 fixes we need to do. I haven't even begun to talk to
10 stakeholders yet. That's what -- I guess that's what
11 I'm doing today. All of you stakeholders out there
12 listening, I am hoping to get your thoughts later
13 about whether you think something like this would
14 work.

15 So that's the legislation.

16 Other Rules Updates. Besides the rules that
17 you adopted today, we have some early discussions with
18 the Department of Ecology regarding general permit
19 coverage. I think we have got the authority now to
20 issue coverage under Ecology general permits. Where
21 that would most likely come up, for example, is a
22 construction stormwater permit. Basically, a
23 construction stormwater permit is keep your dirt out
24 of the water, keep it on your property. I mean if you
25 are doing that you are most likely in compliance with

1 your construction stormwater general permit.

2 But how it is now, there are some things in
3 our WACs which raise questions about whether we do
4 have authority to issue coverage under general permits
5 that Ecology have.

6 So we have just started some preliminary
7 discussions with them. We haven't run that by our
8 very talented AG yet, so I want to make sure we do
9 that. We want to make sure that we can -- because I
10 believe we have this authority, just make it clear
11 that we can issue coverage.

12 What happens is a facility will say, gosh, I'm
13 not sure you've got authority to issue coverage under
14 a general stormwater permit. We will have -- rather
15 than take that chance, have our permit thrown out,
16 we'll just require an individual permit.

17 Well, what happens then is this whole
18 individual permit is cut and pasted, except where it
19 says "Ecology," it says "EFSEC." I mean there's a few
20 other changes, but that's what happens.

21 To me that is like requiring a delivery truck
22 coming up to EFSEC's back door, unloading into another
23 truck, and then that truck gets unloaded through
24 our -- through our back door. Why not just let the
25 first truck pull right up and unload? It just seems

1 silly to me. It's a waste of time, it's a waste of
2 money. In fact, you can have problems because in
3 trans -- picking up all of this information from one
4 permit and putting it in another, there's a chance you
5 might mix -- miss something. It's just an accident
6 waiting to happen.

7 I think that's something that we could do
8 without a whole lot of trouble. I am hoping in the
9 next couple of months or so that we will -- that the
10 Council will see that and we can authorize another
11 rulemaking adoption for that.

12 Some other things we've got in the works. I'm
13 also working -- because our bill just passed, I am
14 working on updating our enforcement WAC to implement
15 that. We have, like I mentioned, a few remaining air
16 rules that we want to tweak. We are also talking with
17 Ecology about a bigger cleanup up of our water quality
18 rules. That's -- that's more -- a little bit on the
19 back burner because we want to make sure that we don't
20 have too many things going at one time. We want to
21 complete these other things, particularly the air
22 rules. I just want to make sure that that's done.

23 So that's our update on rules.

24 Any questions about any of that process?

25 You'll be seeing lots more paper.

1 I think historically -- and why we are doing
 2 this big push to get all of these rules updated,
 3 historically, when EFSEC doesn't have a project in the
 4 door, they cut way back on staff. I think they have
 5 cut too much back on staff. It's like, okay, we've
 6 got somebody, you can, you know, make sure that the
 7 facilities are operating. But you also have to
 8 maintain your regulatory regime, which is make sure
 9 your statutes and your regs are up-to-date. We just
 10 haven't had the resources to do that.

11 I am kind of a legislative reg nerd, I think
 12 most people would say, and how can I refute that? I
 13 just feel a need to get a lot of these things updated
 14 and put into place. We are, I think, well on our way,
 15 with Staff's help and help from Ecology and others, to
 16 making that happen.

17 So with that, Mr. Posner, first quarter cost
 18 allocation.

19 MR. POSNER: So in your packets you have
 20 a copy of the first quarter allocation sheet. We do
 21 this at the beginning of every quarter, where we
 22 recalculate, look at our -- the work that was done in
 23 the past quarter, and then also in anticipation of the
 24 work that we see happening for the quarter we are in,
 25 we come up with these numbers.

1 So I will go ahead and just read them off.
 2 For the Kittitas Valley Wind Project, it's 8 percent;
 3 Wild Horse Wind Project, 8 percent; Columbia
 4 Generating Station, 16 percent; the WNP 1 and 4 site
 5 is 3 percent; Whistling Ridge Energy Project,
 6 3 percent; Grays Harbor 1 and 2, 9 percent; Chehalis
 7 Generation, 9 percent; Desert Claim, 2 percent; Grays
 8 Harbor Energy 3 and 4, 3 percent; and Vancouver
 9 Energy, 39 percent.

10 And that's all I have on that matter.

11 Any questions?

12 CHAIR LYNCH: Any questions for
 13 Mr. Posner?

14 MR. POSNER: Chair Lynch, I do have one
 15 other thing before we adjourn. I just wanted to let
 16 the councilmembers and the public know that starting
 17 this month on our website, we are making available the
 18 information that is in your packets on our website.
 19 Generally, it will be there no later than the morning
 20 of the day of the Council meeting. We have received
 21 questions from the public about that information, so
 22 just so that the public has an opportunity to see what
 23 is in the packets. It is all publicly available
 24 information, we are making that available. I just
 25 wanted to let the councilmembers know that.

1 CHAIR LYNCH: Very good. And it is all
 2 stamped "draft" at that point; is that correct?

3 MR. POSNER: Well, the one document that
 4 is a draft is the minutes, which are not approved, so
 5 we want to make sure.

6 And then in the case of like the enforcement
 7 documents that you discussed, those are draft
 8 documents. Typically, the reports we get from the
 9 projects, once we get those, those are public
 10 documents, so we don't consider those draft documents.

11 CHAIR LYNCH: Okay.

12 Any questions for Mr. Posner?

13 Any further business before the Council?

14 Thank you for all your participation today.

15 We are adjourned.

16 (Meeting adjourned at 2:28 p.m.)

CERTIFICATE

1 STATE OF WASHINGTON
 2 COUNTY OF KING

3 I, Sherrilyn Smith, a Certified
 4 Shorthand Reporter in and for the State of Washington,
 5 do hereby certify that the foregoing transcript is
 6 true and accurate to the best of my knowledge, skill
 7 and ability.

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SHERRILYN SMITH



Chehalis Generation Facility
1813 Bishop Road
Chehalis, Washington 98532
Phone: 360-748-1300

Chehalis Generation Facility----Monthly Plant Report - June 2015 **Washington Energy Facility Site Evaluation Council**

15 July 2015

Safety:

- There were no recordable incidents this reporting period and the plant staff has achieved 4608 days without a Lost Time Accident.

Environment:

- Waste water monitoring results are in compliance with the permit limits for the month of June 2015.

Personnel:

- Authorized plant staffing level is currently 19 with 19 positions filled.

Operations and Maintenance Activities:

- The Plant began a 45 day major maintenance overhaul of the entire plant on May 2nd. The overhaul was complete on Monday June 15, 2015.
- The Plant generated 113,269 MW-hrs in June and a capacity factor YTD of 9.5%.

Regulatory/Compliance:

- There were no air emissions deviations, waste-water or stormwater deviations or spills during the month of June 2015.
- Sound monitoring: There were no noise complaints to report.

Carbon Offset Mitigation

Nothing to report this period

Respectfully,

Mark A. Miller
Manager, Gas Plant

**Energy Northwest
EFSEC Council Meeting
July 21, 2015
(Shannon Khounnala)**

I. Columbia Generating Station Operational Status

Columbia is online at 64% power and producing 683 MWs. The plant returned to online operations on June 28th, 2015.

During the process to return to full power, Columbia encountered some difficulties with a reactor feed water valve. Troubleshooting revealed that the discharge valve contained an internal component that is stuck. With only one of the pumps operating as designed, Columbia is limited to approximately 65 percent power. Following this discovery, Energy Northwest thoroughly vetted the repair options and has chosen to complete the repair while continuing to operate at reduced power. The repair requires use of an external specialty vendor and began after the July 4th holiday. The repair will continue this week.

While the reactor feed water value issue poses a temporary hurdle to returning the plant to 100% power, the refueling outage has been a success in completing over 2000 maintenance work orders. A couple notable maintenance activities included work on our main generator and the replacement of 3 of our 4 main transformers with new units.

The outage was completed without any recordable or lost time injuries.

There are no other events, safety incidents, or regulatory issues to report.

II. WNP 1/4 Water Rights

No change from the June report:

The Department of Energy continues to work on the NEPA Environmental Assessment (EA) for WNP 1/4. Currently, DOE is awaiting the bid from their contractor for preparation of the EA. The NEPA Environmental Assessment will allow a new lease to be signed between EN and the Department of Energy, and thereby allow for use of the water rights obtained in January of this year. The preparation of the NEPA Environmental Assessment is expected to last through the summer and fall of 2015 with formal reviews to follow.

Wild Horse

Wind Production: June generation totaled 50,038 MWh for an average capacity factor of 25.49%.

Safety: No lost-time accidents or safety incidents to report in June.

Compliance/Environmental: Nothing to report.

Kittitas Valley Wind Power Project

Monthly Project Update

July 21, 2015

Project Status Update

June Production Summary:

Power generated: 39,730 MWh
Wind speed: 9.5 m/s or 21.3 mph
Capacity Factor: 54.7%

Safety:

No incidents
Completed medical emergency, hazardous material spill and severe weather drills during an all hands 'Safety Day'.

Compliance:

Project is in compliance as of July 17, 2015.

Sound:

No complaints

Shadow Flicker:

No complaints

Environmental:

Nothing non-routine

EFSEC Monthly Operational Report

June, 2015

1. Safety and Training

- 1.1. There were no accidents or injuries during the month of June.
- 1.2. Conducted scheduled and required monthly training.
- 1.3. Conducted the scheduled safety committee meeting.
- 1.4. Conducted first aid and fire extinguisher training for stragglers and dependents.

2. Environmental

- 2.1. Completed the Annual Outfall inspection.
- 2.2. Completed the annual Outfall Instrumentation Functional Testing.
- 2.3. Submitted the May DMR
- 2.4. Notified EFSEC of NPDES non-compliance due to failure to obtain 4 hour grab samples with pH instrument OOS.
- 2.5. Submitted 5-day letter to EFSEC on outfall pH non-compliance.
- 2.6. Met with EFSEC, EPA, Ecology, Environ, and ORCAA on PSD-4 draft from EPA.
- 2.7. Met with EFSEC, Ecology, and AECOM on Engineering Report. The current report will be submitted then remaining pollution prevention activities will occur. Plant discharge will be re-evaluated and the results will be captured in an addendum to the Engineering Report.

3. Operations & Maintenance

- 3.1. Grays Harbor Energy (GHE) operated 29 days and generated 393,243 MWh during the month of June.
- 3.2. The capacity factor (CF) was 88.1% in June, and 25.4% YTD.
- 3.3. The availability factor (AF) was 100% in June, and 91.1% YTD.

4. Noise and/or Odor

- 4.1. There were no complaints made to the site during the month of June.

5. Site Visits

- 5.1. There were no site visitors during the month of June.

6. Other

- 6.1. Grays Harbor is currently staffed with 20 personnel. We have made offers to candidates to fill two open operations positions.
- 6.2. Installation of noise monitoring equipment is planned for the 2nd half of 2015. The noise monitor has been purchased, and the installation engineering and planning is currently taking place.

Energy Facility Site Evaluation Council

Non Direct Cost Allocation for 1st Quarter FY 2016 July 1, 2015 – September 30, 2015

The EFSEC Cost Allocation Plan (Plan) was approved by the Energy Facility Site Evaluation Council in September 2004. The Plan directed review of the past quarter's percentage of EFSEC technical staff's average FTE's, charged to EFSEC projects. This information is used as the basis for determining the non-direct cost percentage charge, for each EFSEC project. In addition, the Plan allows for adjustment due to anticipated work load and the addition of new projects.

Based on the levels of work during the 4th quarter of FY 2015, using the procedures for developing cost allocation, and allowance for new projects, the following percentages shall be used to allocate EFSEC's non direct costs for the 1st quarter of FY 2016:

Kittitas Valley Wind Power Project	8%
Wild Horse Wind Power Project	8%
Columbia Generating Station	16%
WNP-1	3%
Whistling Ridge Energy Project	3%
Grays Harbor 1&2	9%
Chehalis Generation Project	9%
Desert Claim Wind Power Project	2%
Grays Harbor Energy 3&4	3%
Tesoro Savage	39%



Stephen Posner, EFSEC Manager

Date: 7/21/15



STATE OF WASHINGTON

ENERGY FACILITY SITE EVALUATION COUNCIL

PO Box 43172 • Olympia, Washington 98504-3172

BRIEFING MEMO

TO: Energy Facility Site Evaluation Council

FROM: Staff

DATE: July 21, 2015

SUBJECT: Recommendation for Adoption of Revisions to Chapter 463-78 WAC –
General and Operating Permit Regulations for Air Pollution Sources

Background

EFSEC is authorized by the U. S. Environmental Protection Agency (EPA) to implement a prevention of significant deterioration (PSD) permit program through a delegation agreement executed in January, 1993. EFSEC is partially delegated, which means its PSD permits must be signed by both the EFSEC Chair and a senior EPA official at Region 10 in Seattle. In the past, EFSEC PSD permits were written by either an Ecology Air Quality Program permit writer or an EPA permit writer, depending on the circumstances.

At this time EFSEC is in the early stages of preparing an update to its state implementation plan (SIP). A SIP describes how the state plans to implement, maintain, and enforce National Ambient Air Quality Standards (NAAQS). As part of its effort to update its SIP, EFSEC has nearly completed an adoption by reference of existing Ecology air quality rules. Washington statute requires that Ecology and EFSEC rules be consistent to provide maximum coordination and avoid duplication between the two agencies. At least one additional EFSEC rule amendment in support of its SIP update will occur in the next 18 months.

Current Rule Adoption

EFSEC's current adoption by reference of existing Ecology rules encompasses five rule amendments implemented by Ecology between December 2010 and November 2012,

Attachment A

From 2010 through 2012 Department of Ecology conducted five rulemaking processes to revise air quality rules contained in Chapter 173-400 WAC and Chapter 173-401 WAC. The purpose of these rule revisions was to assure consistency and compliance with recent US Environmental Protection Agency (EPA) rule revisions.

In this rulemaking, EFSEC proposes to adopt by reference recent Ecology rule revisions that apply to facilities under EFSEC jurisdiction. State statute requires that EFSEC rules be consistent with the Washington Clean Air Act and Ecology rules, so those Ecology rule revisions that do not apply to EFSEC facilities have been deleted.

A summary of Ecology and Federal rule revisions encompassed by this rulemaking that EFSEC proposes to adopt by reference is presented below and organized by the effective date of Ecology rule adoption.

General Regulations for Air Pollution Sources, Chapter 173-400 WAC, effective 4/1/11.

- Bring the rule into compliance with EPA's regulations including standards for excess emissions and major stationary sources located in a nonattainment area, and update the date of federal regulations adopted by reference.
- Set a new exemption level for greenhouse gas emissions and particulate matter, PM2.5, below which permitting is not required.
- Keep the rule consistent with recent updates to related WACs.
- Update definitions to match current state and federal regulations.
- Establish a permitting procedure for emergency engines.
- Update the rule to resolve State Implementation Plan deficiencies.
- Additional housekeeping corrections and changes.

General Regulations for Air Pollution Sources, Chapter 173-400 WAC, and Operating Permit Regulation, Chapter 173-401 WAC, effective 9/10/11.

- This rule making does not change the greenhouse gas reporting requirements in Chapter 173-441 WAC.

General Regulations for Air Pollution Sources, Chapter 173-400 WAC, effective 12/29/12.

- Make the rule consistent with requirements in the Federal Clean Air Act.
- Support EFSEC's request for EPA's approval of State Implementation Plan (SIP) revisions.
- Amend the rule sections related to permits for industrial sources of air pollution including minor new source review and major new source review (Prevention of Significant Deterioration).
- Help emitters comply with the rule through better access to references, improved readability, and better understanding of regulations and permitting requirements.

Operating Permit Regulation, Chapter 173-401 WAC, effective 1/1/11.

- Make the rule consistent with EPA and Ecology requirements for reporting emissions of greenhouse gases.
- Beginning January 1, 2011, sources with an Air Operating Permit must report their greenhouse gas emissions when revising or renewing this permit.
- Beginning July 1, 2011, sources that have the potential to emit 100,000 tons per year or more of greenhouse gases become subject to the Air Operating Permit Program,



BP Cherry Point Refinery
4519 Grandview Road
Blaine, Washington 98230
Telephone 360 371-1500

May 4, 2015

Stephen Posner, Project Manager
State of Washington EFSEC
P.O. Box 43172
Olympia, WA 98504-3172

RE: BP Cherry Point Cogeneration – Project Status

Dear Mr. Posner:

On behalf of BP West Coast Products, LLC (BP), I am writing to confirm that BP does not intend to move forward with construction of the Cherry Point Cogeneration Project authorized by the Site Certification Agreement between EFSEC and BP executed on December 21, 2004, and subsequently amended. We understand that the Site Certification Agreement has expired by its terms.

Please contact me at (360) 319-4599 or via e-mail at jeff.chalfant@bp.com if you have any questions or need additional information regarding this matter. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeff Chalfant', written over a horizontal line.

Jeff Chalfant
BP Cherry Point Refinery

cc: Kara Millhollin, BP Cherry Point Refinery
Karen McGaffey, Perkins Coie LLP



STATE OF WASHINGTON

ENERGY FACILITY SITE EVALUATION COUNCIL

June 22, 2015

Schedule For Development - Draft Environmental Impact Statement (DEIS)

Tesoro Savage Vancouver Energy Distribution Terminal

Cardno, independent consultant for the Energy Facility Site Evaluation Council (EFSEC), in consultation with EFSEC staff has prepared the following schedule for completion of the DEIS.

Task Name	Start	Finish
Prepare Draft EIS	Wed 6/17/15	Tue 11/10/15
Prepare DEIS for EFSEC staff review	Wed 6/17/15	Mon 6/29/15
Finish Chapter 4 Risk of Accidents, Emergency Response, and Potential Impacts	Wed 6/17/15	Fri 6/26/15
Submit for EFSEC staff review	Mon 6/29/15	Mon 6/29/15
EFSEC staff remaining actions	Thu 6/18/15	Fri 6/19/15
Chapter 3 section review complete	Thu 6/18/15	Thu 6/18/15
Direction on AG comments	Fri 6/19/15	Fri 6/19/15
Prepare Complete DEIS for EFSEC Staff, Legal and Contractor Preliminary Review	Mon 6/22/15	Fri 8/14/15
Executive Summary	Fri 7/10/15	Thu 7/16/15
Front Matter and Glossary	Wed 7/1/15	Tue 7/7/15
Chapter 1 Purpose and Need	Mon 6/22/15	Wed 6/24/15
Chapter 2 Project Description and Alternatives	Wed 6/24/15	Wed 7/1/15
Incorporate updated PD and vessel info	Wed 6/24/15	Fri 6/26/15
Address EFSEC staff and AG comments	Mon 6/29/15	Wed 7/1/15
Chapter 3 Affected Environment and Potential Impacts from Proposed Action and Related Actions	Mon 6/22/15	Thu 7/9/15
Chapter 3 comment review, PD changes, define path forward	Mon 6/22/15	Thu 6/25/15
Authors revise resource sections	Fri 6/26/15	Thu 7/9/15
Chapter 4 Risk of Accidents, Emergency Response, and Potential Impacts	Fri 6/26/15	Fri 6/26/15
Chapter 5 Cumulative Impacts	Wed 6/17/15	Thu 6/18/15
Chapter 6 References	Mon 6/29/15	Mon 6/29/15
Chapter 7 List of Preparers	Mon 6/22/15	Tue 6/23/15
Finalize Appendices	Wed 6/17/15	Tue 7/7/15
Combine all sections (tech edit, formatting)	Wed 7/8/15	Tue 7/14/15
Final content and consistency review of entire DEIS	Wed 7/15/15	Tue 8/11/15
Submit entire DEIS for EFSEC staff, contractor, legal review	Tue 8/11/15	Tue 8/11/15
EFSEC Staff, Legal and Contractor review of Complete DEIS	Wed 8/12/15	Tue 9/1/15
EFSEC staff to review legal review comments	Wed 9/2/15	Tue 9/8/15
Cardno address comments	Wed 9/9/15	Tue 9/29/15
EFSEC Staff Review of Complete DEIS	Wed 9/30/15	Tue 10/6/15
Cardno revise DEIS for Council review	Wed 10/7/15	Tue 10/13/15
Submit DEIS for Council review	Wed 10/14/15	Wed 10/14/15
EFSEC Council Members Review of Complete DEIS	Wed 10/14/15	Tue 11/10/15
Council review period	Wed 10/14/15	Tue 10/27/15
EFSEC staff address Council comments	Wed 10/28/15	Tue 11/10/15
Cardno revise and create camera ready DEIS for publication	Wed 11/11/15	Tue 11/17/15
DEIS production (30 hard copies)	Wed 11/18/15	Tue 11/24/15
Publish DEIS	Tue 11/24/15	Tue 11/24/15

EFSEC Gravity Criteria Scoring Worksheet

The Gravity Criteria Scoring Worksheet is used to help determine the appropriate penalty amount for violations of any permit or site certification requirement by an entity regulated by EFSEC. When a continuing violation occurs, each day that the violation occurs may be calculated as a separate violation. The penalty amount generated through this worksheet constitutes the maximum gravity component of a penalty, which may be adjusted by EFSEC's discretion to achieve the purposes of applicable statutes and regulations. EFSEC will add any economic benefit gained from noncompliance to the penalty amount assessed.

1. Did the violator know, or reasonably should have known, about the requirement?
Yes – 5
No – 0
2. Is the violator a large business, small business, or an individual?
Large business – 5
Small Business - 3
Individual – 1
3. Does the violator have a history of violations?
Yes, same law or regulation – 5
Yes, laws or regulations other than the current violation that deal with the environment or natural resources or have a direct bearing on the violation being addressed – 3
No – 0
4. Did the violation result in a risk to the health, safety, welfare, the environment, property, a business and/or enjoyment of personal property?
Yes – 5
No – 0
5. Did the risk in Question #4 result in an impact or is it reasonably expected that an impact did occur?
Yes – 5
No - 0
6. What were the impacts in Question #5? (to determine the score, mark all impacts and add the scores together for the total points for this question)
A) Impacts to an individual's health, safety, or welfare – 5
B) Damage to the environment – 3
C) Impacts to an individual's enjoyment of personal property – 2
D) Damage to property or a business – 2
7. Did the violator take actions to correct the violation?
No, the violation could be corrected, but no actions were taken – 5

Energy Facility Site Evaluation Council

Enforcement Guidance

Purpose: To provide guidance to Energy Facility Site Evaluation Council (EFSEC or Council) staff and Council members on the enforcement process, and to provide for the consistent levying of penalties.

General

This document expresses the Council's current view of its enforcement policies. As a policy statement adopted under the Administrative Procedures Act, chapter 34.05 RCW, it is not intended to be binding as a formally adopted rule. The Council retains discretion to apply and adapt its enforcement efforts in individual cases to implement its overall duty to assure compliance with all site certification agreements and permits issued by the Council. Adoption of this policy advances the effective and equitable enforcement of the laws under the Council's responsibility.

Enforcement is a tool for protecting the public health and the environment. As directed by RCW 80.50.040(9), other agencies perform any on-site inspections required by the Council pursuant to interagency agreement. EFSEC, however, retains authority for determining compliance relative to monitoring. The inspecting agency may recommend a penalty for a violation to EFSEC based upon the penalty criteria adopted by the Council.

A violation does not necessarily result in the issuance of a penalty. A notice of incident and request for assurance of compliance may be issued when a violation is being corrected quickly and effectively by the violator, no substantial danger to humans or the environment resulted from the violation, and a penalty does not appear to be appropriate in light of the seriousness of the violation or as an incentive to secure future compliance.

The purpose of a civil penalty is to influence behavior, encourage compliance, and deter future violations. Penalty amounts will include a gravity component and an economic benefit component. The gravity component will carefully match the significance of the violation to the impact of the enforcement action. The Council will recover any economic benefit in order to promote a level playing field for those businesses that expend money to comply with environmental laws and regulatory requirements.

- 4) A penalty may be issued pursuant to RCW 80.50.150, or RCW 74.90.431 if the violation is of the Washington Clean Air Act. See also RCW 70.94.422 and 90.48.262; WAC 463-70-070(4)(b), 463-74-040, 463-76-065(6), 463-78-230, 463-80-080, 463-85-240.

II. Imposition of Penalties

RCW 80.50.150(5) provides that every person who violates the provisions of certificates and permits issued or administered by the Council is subject to a penalty of up to \$5000 per day for every violation. This section remains in effect for any violations occurring before October 9, 2015. Any violation occurring on or after October 9, 2015 is subject to a penalty of \$10,000 per day per violation (SB 5310, section 5).

Each violation is considered a separate and distinct offense. In the case of a continuing violation, every day's continuance is deemed a separate and distinct violation.

The total penalty will consist of a gravity component and an economic benefit component.

Consistent Penalties – Gravity Component of Penalty

After EFSEC has decided to issue a penalty, the gravity component amount is calculated by using the Gravity Criteria Scoring Worksheet, which contains a penalty matrix. The worksheet asks several questions, and for each question, assigns points based on the response to the particular question. The number of points for all of the questions are then totaled to produce a score for that violation. In the case of a continuing violation, each day's continuance is deemed a separate and distinct violation. The score for the violation is then translated into a specific penalty amount by referring to the range of penalties contained in the penalty matrix. The greater the number of points, the greater the potential penalty. The penalty amounts determined for each violation are added together to produce the statutory maximum amount of the gravity component of the potential penalty.

For example, a regulated entity committed two separate permit violations. One violation is scored at 5 points and the second violation is scored at 16 points. Turning to the penalty matrix, the first violation produces a potential \$1000 penalty, and the second violation produces a potential \$3000 penalty. These two penalties are added together to produce the potential maximum penalty of \$4000 under the gravity component. In another example, a violation generates a potential penalty of \$1000, but the violation was continuing and occurred for eight days. The potential maximum penalty under the gravity component for this continuing violation is \$8000 (\$1000 per day violation x 8 days = \$8000).

NOTE: The penalty matrix for determining the gravity component of a penalty is based upon a statutory daily maximum of \$10,000 per day, per violation. This maximum penalty amount is authorized pursuant to SB 5310, which was enacted during the 2015 third special session. The effective date of this bill is

equipment, obtain necessary permits, or conduct necessary tests. In recognition that the economic benefit component can be difficult to calculate, EFSEC may rely upon an economic analysis used by the inspecting agency for determining the economic benefit of noncompliance. It is general Council policy not to adjust or mitigate the economic benefit component. If the Council decides to adjust the economic benefit component, the reasons must be set forth in the final Council decision.

III. Issuance of Penalty

A penalty must be imposed in writing, either by certified mail with return receipt requested, or by personal service. The penalty notice must describe the violation with reasonable particularity and include the right to appeal of the Council's decision.

IV. Remission/Mitigation of Penalties

For violations occurring before October 9, 2015, a certificate holder may seek remission or mitigation of a penalty from the Council. The request for remission or mitigation must be filed with the Council within 15 days after *receipt* of the notice of violation. RCW 80.50.150(5). Note that the Council's regulation provides that this request must be filed within 15 days after *service* of the notice of violation. See WAC 463-70-070(4)(c)(i). The Council will rely upon the date of receipt for calculating the 15-day time period for requesting remission or mitigation. A decision by the Council to remit or mitigate a penalty is an administrative decision which the Council makes within its discretion. Remission or mitigation is only generally allowed to raise items not considered as part of the imposition of the original penalty.

The ability to request remission or mitigation of a penalty was repealed as part of SB 5310, which was enacted during the 2015 third special session.

V. Appeal Rights

Any person may appeal a penalty imposed by the Council to the Council within 30 days after the date of receipt of the notice imposing the penalty. For violations occurring before October 9, 2015, if an application for remission or mitigation is filed, the appeal of the penalty must be filed within 30 days of receipt of notice from the Council setting forth the disposition of the application. Timely appeal to the Council is required before an appeal of the penalty may be made to superior court.

EFSEC Gravity Criteria Notes

When scoring the eight questions, use the point values listed on the Gravity Criteria Scoring Worksheet as listed. Do not use other point values other than those specifically listed.

1. Did the violator know, or reasonably should have known, about the requirement?

Knowledge may be obtained from a variety of sources, including previous technical assistance. Do not look only at direct contact between the agency and the violator addressing the laws and regulations violated. Knowledge may also be obtained by focused outreach efforts (such as to an industry group or to residents in a specific area) and general outreach efforts by federal, state, or local agencies, or activist/interest groups.

Claims of a lack of knowledge due to "not reading," "not listening," or "not seeing," etc. educational efforts by entities that have been reasonably presented to the violator should be considered a knowing violation.

2. Is the violator a large business or a small business?

Penalties should act as deterrents to future violations. The deterrent value of a penalty is relative to the ability of the violator to pay the penalty. A penalty that would have little impact to a large corporation may have a devastating impact to a small business.

Small and large businesses may be differentiated by using the definition of a "small business" under the Regulatory Fairness Act, Chapter 19.85 RCW. RCW 19.85.020(1) defines a "small business", in part, as a business entity with fifty or fewer employees.

3. Does the violator have a history of violations?

This question addresses the past behavior of the violator towards environmental laws, and other laws as they apply to the violator's operation in general. Violations considered for this question should be either state, federal, or local environmental/natural resources laws and regulations, or should have a direct bearing on the violation being addressed.

Violations that are for the same or very similar violation should be scored higher than for other violations (example: a violator of a water quality law who has violated water quality laws and regulations before would score higher than a violator who has violated air quality laws before but not water quality laws).

4. Did the violation result in a risk to the health, safety, welfare, the environment, property, a business and/or enjoyment of personal property?

To determine the score for Question #6, mark all impacts and add the score for each impact together for a total score.

7. Did the violator take actions to correct the violation?

Review any action considered for this question by asking: "Does the action focus on correcting and/or mitigating impacts to the environment and/or human health?"

The Council may be more lenient if the violator promptly corrects a violation, and any underlying system problems, when these are pointed out by staff. Specific actions include purchasing new technology, making system changes, or training company personnel. The Council may be more lenient if the violator has an active and adequate compliance program in place.

The Council may also be more lenient if the violator self-reported the violation, and if the violator is cooperative and responsive during the investigation of the violation.

8. Was there an economic benefit to the violator from this violation, or did the violator expect an economic benefit was being derived from the violation?

The quantitative measurement of economic benefit is reserved for a separate calculation to be added to the penalty amount. This question is aimed at reflecting a greater severity of a violation if one of the reasons for the violation is a perceived economic benefit even when the benefit is not actually obtained. In order to support an evaluation of the perception of an economic benefit for the violation, look for statements such as "I can't afford to wait for a permit, or install such equipment."



US Army Corps
of Engineers
Seattle District

Joint Public Notice

Application for a Department of the Army Permit and an Energy Facility Site Evaluation Council Water Quality Certification

US Army Corps of Engineers
Regulatory Branch
Post Office Box 3755
Seattle, WA 98124-3755
Telephone: (206) 316-3047
ATTN: Steve Manlow,
Project Manager

Energy Facility Site Evaluation
Council
Post Office Box 43172
Olympia, WA 98504-3172
Telephone: (360) 664-1363
ATTN: Sonia Bumpus,
Energy Facility Siting
Specialist

Public Notice Date: July 2, 2015
Expiration Date: August 1, 2015

Reference No.: NWS-2013-962
Name: Tesoro Savage Petroleum
Terminal, LLC

Interested parties are hereby notified that the U.S. Army Corps of Engineers (Corps) and the Energy Facility Site Evaluation Council (EFSEC) have received an application to perform work in waters of the U.S. as described below and shown on the enclosed drawings dated January 2014.

The Corps will review the work in accordance with Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act. EFSEC and its contractor the Department of Ecology (Ecology) will review the work pursuant to Section 401 of the CWA, with applicable provisions of State water pollution control laws.

APPLICANT: Tesoro Savage Petroleum Terminal, LLC
6340 South 3000 East, Suite 600
Salt Lake City, Utah 84121
Attention: Kelly Flint
Telephone: (801) 944-6600

AGENT: BergerABAM
1111 Main Street, Suite 300
Vancouver, Washington 98660
Attention: Brian Carrico
Telephone: (360) 823-6112

LOCATION: In the Columbia River at the Port of Vancouver berths 13 and 14, 5501 Northwest Lower River Road, in Vancouver, Clark County, Washington.

WORK: Conduct seismic and safety upgrades and utility line work at existing piers in the Columbia River. This work is part of a proposal to construct a terminal that would receive up to an average of 360,000 barrels of crude oil per day from train. Oil would be stored onsite for eventual transfer to marine vessels, for transport primarily to refineries along the west coast of the U.S. Seismic and safety upgrades include replacing decking, mooring hardware and fender systems, filling existing hollow steel pipe piles with concrete, and removing portions of some overwater structures. The utility line work includes installing a transfer pipeline, return line, manifolds, hoses, a crane structure, and other facilities on an existing pier. The remainder of the proposed terminal would be built in

NWS-2013-962, Tesoro Savage Petroleum Terminal, LLC

uplands and not require Department of the Army authorization from the Corps. Those upland activities include constructing rail lines, above-ground storage tanks, buildings, ground modifications to meet seismic design requirements, and related facilities.

PURPOSE: To construct an export facility for the transfer of crude oil to marine vessels.

MITIGATION: Compensatory mitigation is not proposed.

ENDANGERED SPECIES: The Endangered Species Act (ESA) requires federal agencies to consult with the National Marine Fisheries Service (NMFS) and/or U.S. Fish and Wildlife Service pursuant to Section 7 of the ESA on all actions that may affect a species listed (or proposed for listing) under the ESA as threatened or endangered or any designated critical habitat. After receipt of comments from this public notice, the Corps will evaluate the potential impacts to proposed and/or listed species and their designated critical habitat.

ESSENTIAL FISH HABITAT: The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996, requires all Federal agencies to consult with the NMFS on all actions, or proposed actions, permitted, funded, or undertaken by the agency, that may adversely affect Essential Fish Habitat (EFH). The proposed action would impact EFH in the project area. The Corps has determined that the proposed action will not adversely affect designated EFH for federally managed fisheries in Washington waters. No further EFH consultation is necessary.

CULTURAL RESOURCES: The Corps has reviewed the latest published version of the National Register of Historic Places, Washington Information System for Architectural and Archaeological Records Data and other sources of information. A historic properties investigation has also been conducted within the permit area. No historic properties determined eligible for or listed on the National Register of Historic Places were found to exist within the permit area. The Corps invites responses to this public notice from Native American Tribes or tribal governments; Federal, State, and local agencies; historical and archeological societies; and other parties likely to have knowledge of or concerns regarding historic properties and sites of religious and cultural significance at or near the project area. After receipt of comments from this public notice, the Corps will evaluate potential impacts and consult with the State Historic Preservation Officer and Native American Tribes in accordance with Section 106 of the National Historic Preservation Act, as appropriate.

PUBLIC HEARING: Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing.

EVALUATION – CORPS: The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered, including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

The Corps is soliciting comments from the public; Native American Nations or tribal governments; Federal, State, and local agencies and officials; and other interested parties in order to consider and evaluate the impacts of this activity. Any comments received will be considered by the Corps to determine whether to issue, modify, condition or deny a permit for the work. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above.

NWS-2013-962, Tesoro Savage Petroleum Terminal, LLC

Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the activity.

The described discharge will be evaluated for compliance with guidelines promulgated by the Environmental Protection Agency under authority of Section 404(b)(1) of the CWA. These guidelines require an alternatives analysis for any proposed discharge of dredged or fill material into waters of the United States.

SOURCE OF FILL MATERIAL: Fill material that would be placed in waters of the U.S. will be limited to discharge of concrete into existing steel piles. The applicant has not yet identified the source of the fill material. Should a permit be issued, the Corps will evaluate the fill material source prior to the start of construction.

EVALUATION – EFSEC: EFSEC is soliciting comments from the public; Federal, Native American Nations or tribal governments, State, and local agencies and officials; and other interested parties in order to consider and evaluate the impacts of this activity. EFSEC will be considering all comments to determine conditions the applicant would need to meet in designing the project to be in compliance with Section 401 of the CWA.

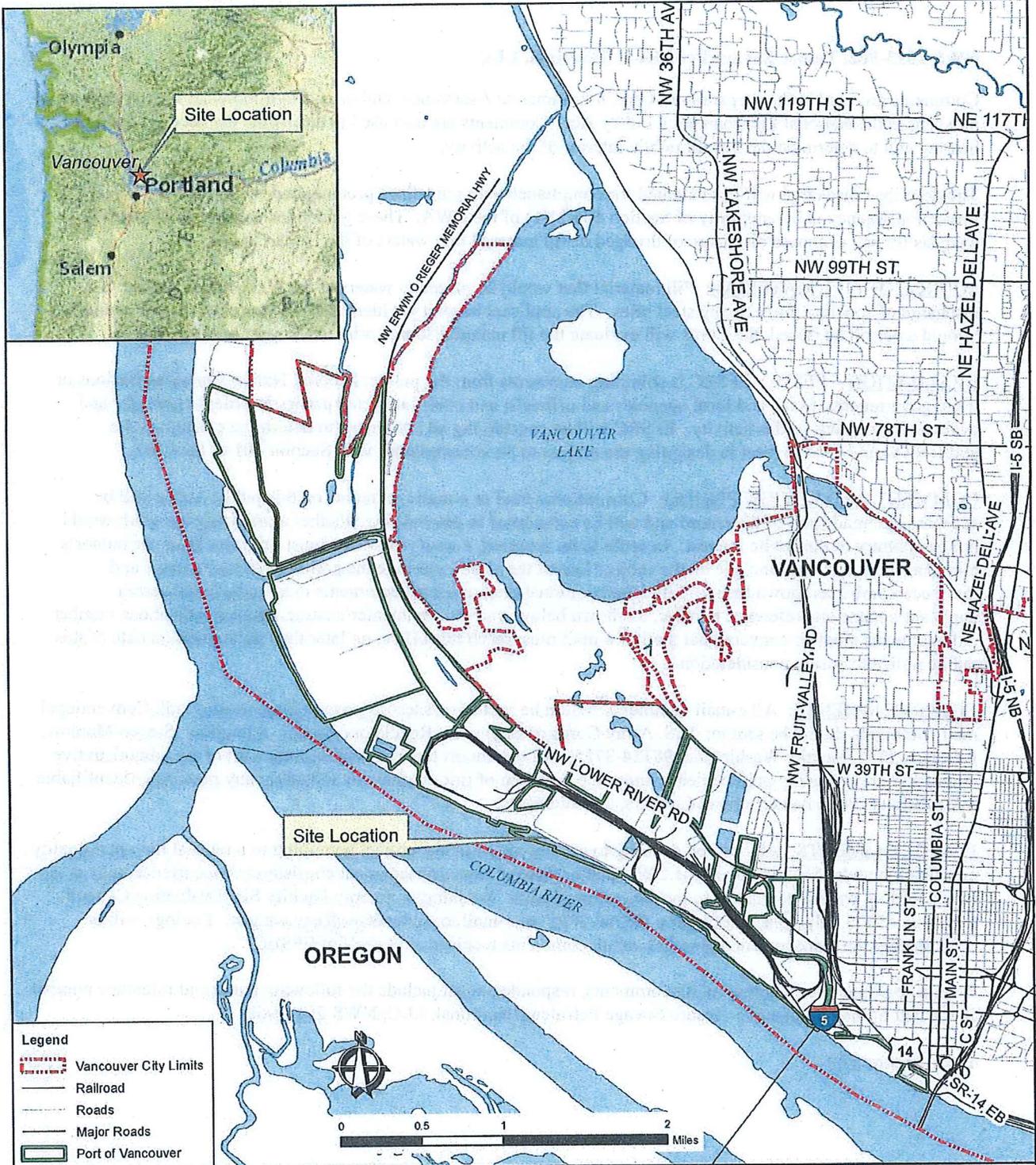
COMMENT AND REVIEW PERIOD: Conventional mail or e-mail comments on this public notice will be accepted and made part of the record and will be considered in determining whether authorizing the work would not be contrary to the public interest. In order to be accepted, e-mail comments must originate from the author's e-mail account and must include on the subject line of the e-mail message the permit applicant's name and reference number as shown below. Either conventional mail or e-mail comments must include the permit applicant's name and reference number, as shown below, and the commenter's name, address, and phone number. All comments whether conventional mail or e-mail must reach this office, no later than the expiration date of this public notice to ensure consideration.

CORPS COMMENTS: All e-mail comments should be sent to nws.tesoro_savage@usace.army.mil. Conventional mail comments should be sent to: U.S. Army Corps of Engineers, Regulatory Branch, Attention: Steven Manlow, P.O. Box 3755, Seattle, Washington 98124-3755. All comments received will become part of the administrative record and are subject to public release under the Freedom of Information Act including any personally identifiable information such as names, phone numbers, and addresses.

EFSEC COMMENTS: Any person desiring to present views on the project pertaining to a request for water quality certification under Section 401 of the CWA and/or Coastal Zone Management consistency concurrence, may do so by submitting written comments to the following address: Washington Energy Facility Site Evaluation Council, P.O. Box 43172, Olympia, Washington 98504-3172, or e-mail to ecyfedefsec@ecy.wa.gov. Ecology will be coordinating the management and review of all comments received, on behalf of EFSEC.

To ensure proper consideration of all comments, responders must include the following name and reference number in the text of their comments: Tesoro Savage Petroleum Terminal, LLC; NWS-2013-962

Encl: Figures (7)



Legend

- Vancouver City Limits
- Railroad
- Roads
- Major Roads
- Port of Vancouver



PURPOSE: Bring the currently serviceable structure up to current seismic design standards for the continued use of the dock to berth marine vessels (NWP 3) and to install pipelines and associated facilities to allow for the transportation of crude oil from upland unloading and storage facilities to marine vessels (NWP 12).

APPLICANT: Tesoro-Savage

ADJACENT PROPERTY OWNERS:
Port of Vancouver, Washington Department of Natural Resources (WDNR).

FIGURE 1
VICINITY MAP
Corps Ref: NWS-2013-962

TESORO SAVAGE VANCOUVER
ENERGY DISTRIBUTION TERMINAL

LAT/LONG: N 45.642/ W 122.719
NEAR/AT: VANCOUVER
COUNTY OF: CLARK
STATE OF: WA
APPLICATION BY:
TESORO SAVAGE PETROLEUM TERMINAL LLC
In: Columbia River

Page 1 of 7
January 2014



PURPOSE: Bring the currently serviceable structure up to current seismic design standards for the continued use of the dock to berth marine vessels (NWP 3) and to install pipelines and associated facilities to allow for the transportation of crude oil from upland unloading and storage facilities to marine vessels (NWP 12).

APPLICANT: Tesoro-Savage

ADJACENT PROPERTY OWNERS:
Port of Vancouver, Washington Department of Natural Resources (WDNR),

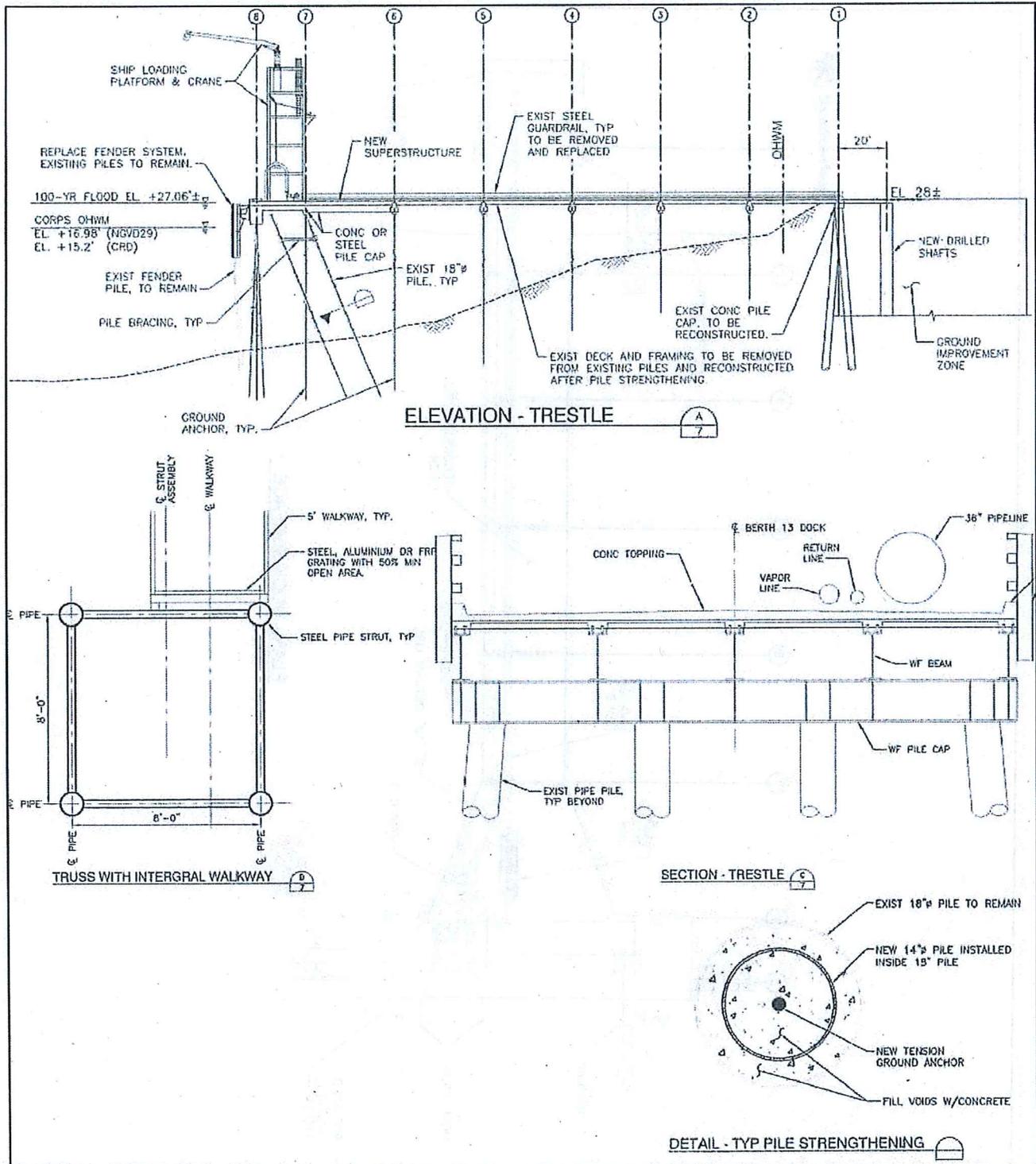
FIGURE 2
**EXISTING CONDITIONS/
TAX LOTS**

Corps Ref: NWS-2013-962

**TESORO SAVAGE VANCOUVER
ENERGY DISTRIBUTION TERMINAL**

LAT/LONG: N 45.642/ W 122.719
NEAR/AT: VANCOUVER
COUNTY OF: CLARK
STATE OF: WA
APPLICATION BY:
TESORO SAVAGE PETROLEUM TERMINAL LLC
In: Columbia River

Page 2 of 7
January 2014



PURPOSE: Bring the currently serviceable structure up to current seismic design standards for the continued use of the dock to berth marine vessels (NWP 3) and to install pipelines and associated facilities to allow for the transportation of crude oil from upland unloading and storage facilities to marine vessels (NWP 12).

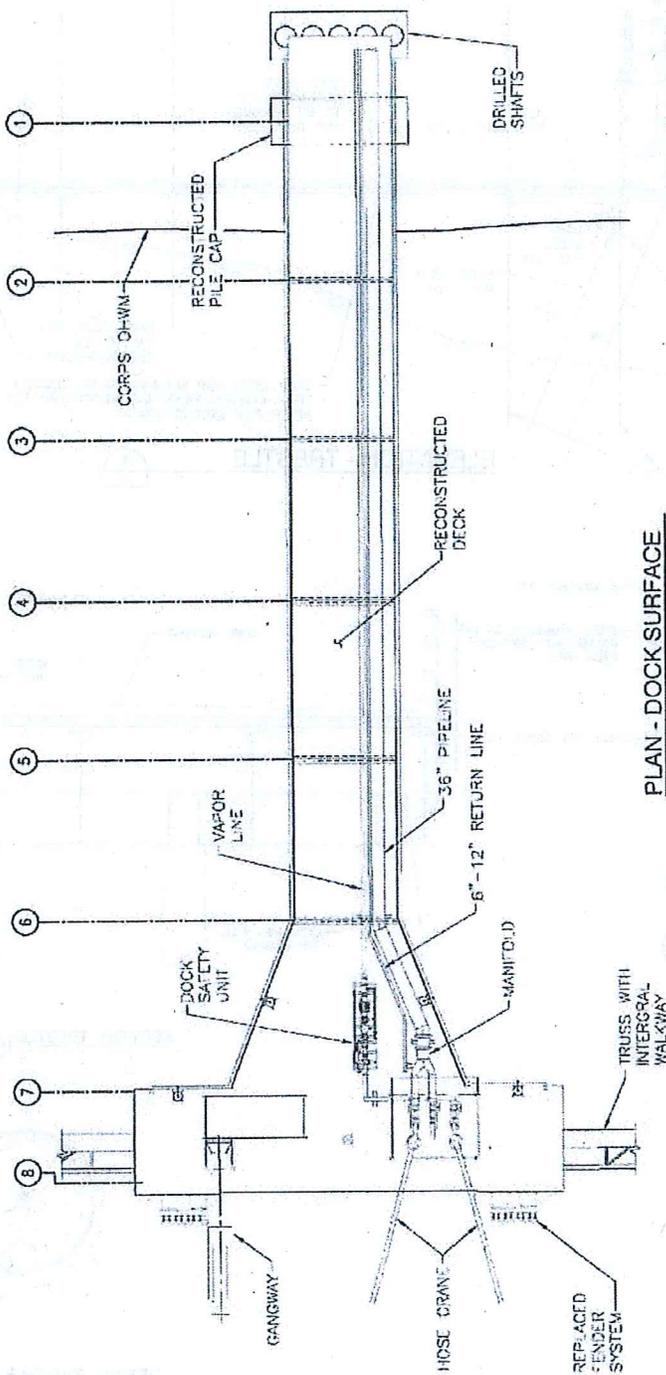
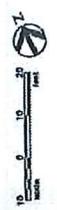
APPLICANT: Tesoro-Savage

ADJACENT PROPERTY OWNERS:
 Port of Vancouver, Washington Department of Natural Resources (WDNR),

FIGURE 4
CROSS SECTION DETAILS
 Corps Ref: NWS-2013-962

TESORO SAVAGE VANCOUVER
 ENERGY DISTRIBUTION TERMINAL

LAT/LONG: N 45.642/ W 122.719
 NEAR/AT: VANCOUVER
 COUNTY OF: CLARK
 STATE OF: WA
 APPLICATION BY:
 TESORO SAVAGE PETROLEUM TERMINAL LLC
 In: Columbia River
 Page 4 of 7
 January 2014



PLAN - DOCK SURFACE

PURPOSE: Bring the currently serviceable structure up to current seismic design standards for the continued use of the dock to berth marine vessels (NWP 3) and to install pipelines and associated facilities to allow for the transportation of crude oil from upland unloading and storage facilities to marine vessels (NWP 12).

APPLICANT: Tesoro-Savage

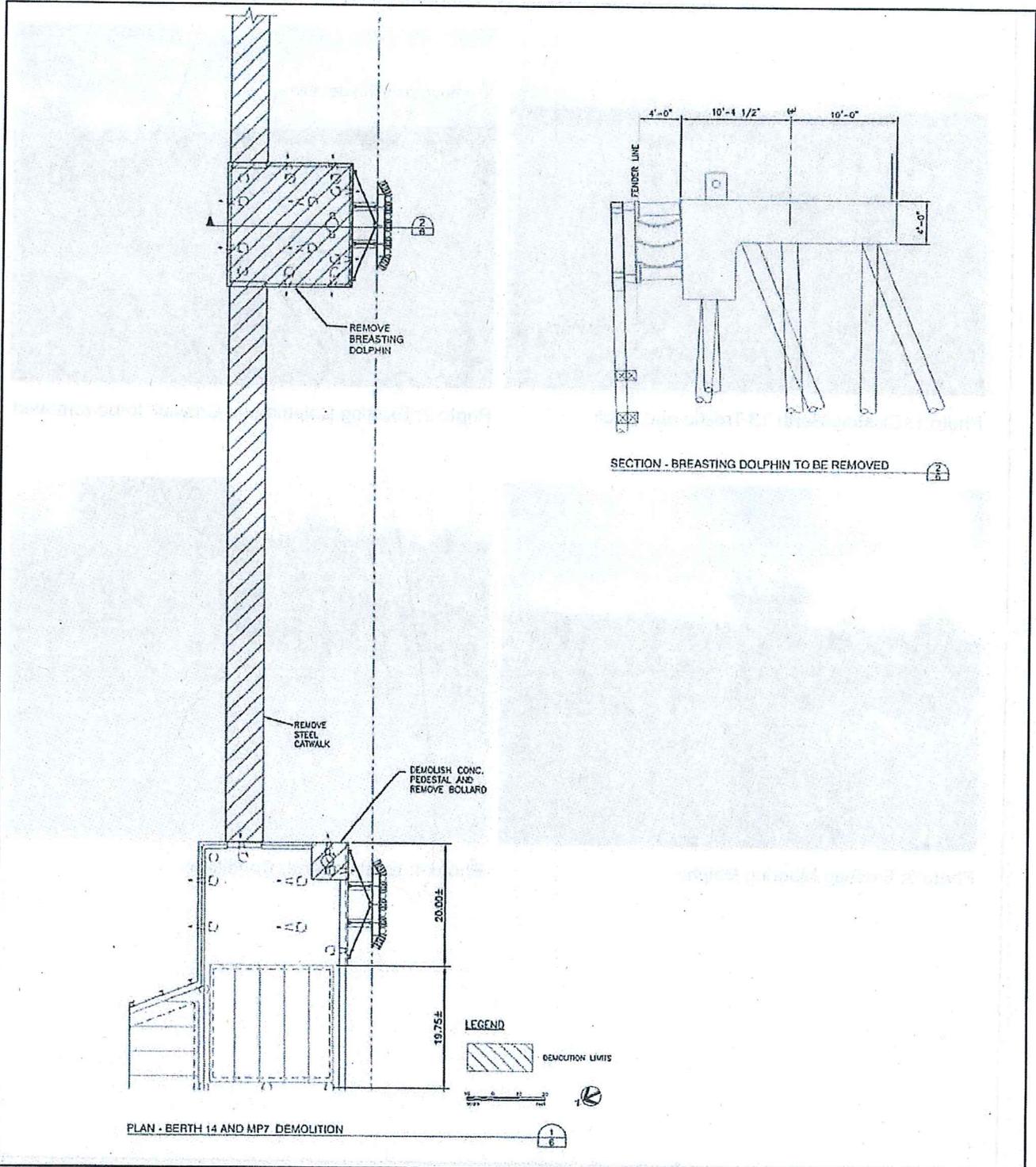
ADJACENT PROPERTY OWNERS:
Port of Vancouver, Washington Department of Natural Resources (WDNR).

FIGURE 5
DOCK SURFACE PLAN
Corps Ref: NWS-2013-962

TESORO SAVAGE VANCOUVER
ENERGY DISTRIBUTION TERMINAL

LAT/LONG: N 45.642/ W 122.719
NEAR/AT: VANCOUVER
COUNTY OF: CLARK
STATE OF: WA
APPLICATION BY:
TESORO SAVAGE PETROLEUM TERMINAL LLC
In: Columbia River

Page 5 of 7
January 2014



PURPOSE: Bring the currently serviceable structure up to current seismic design standards for the continued use of the dock to berth marine vessels (NWP 3) and to install pipelines and associated facilities to allow for the transportation of crude oil from upland unloading and storage facilities to marine vessels (NWP 12).

APPLICANT: Tesoro-Savage

ADJACENT PROPERTY OWNERS:
Port of Vancouver, Washington Department of Natural Resources (WDNR),

FIGURE 6
DEMOLITION PLAN
Corps Ref: NWS-2013-962

TESORO SAVAGE VANCOUVER
ENERGY DISTRIBUTION TERMINAL

LAT/LONG: N 45.642/ W 122.719
NEAR/AT: VANCOUVER
COUNTY OF: CLARK
STATE OF: WA
APPLICATION BY:
TESORO SAVAGE PETROLEUM TERMINAL LLC
In: Columbia River
Page 6 of 7
January 2014

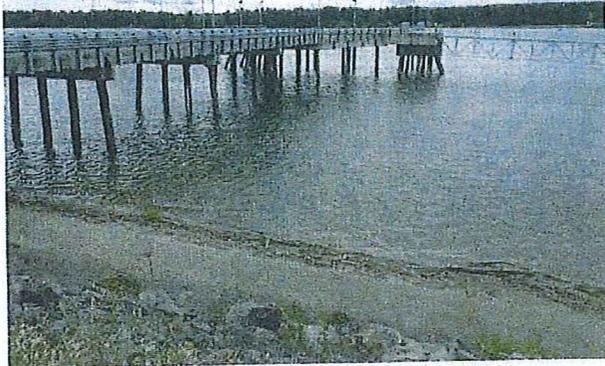


Photo 1: Existing Berth 13 Trestle and Dock

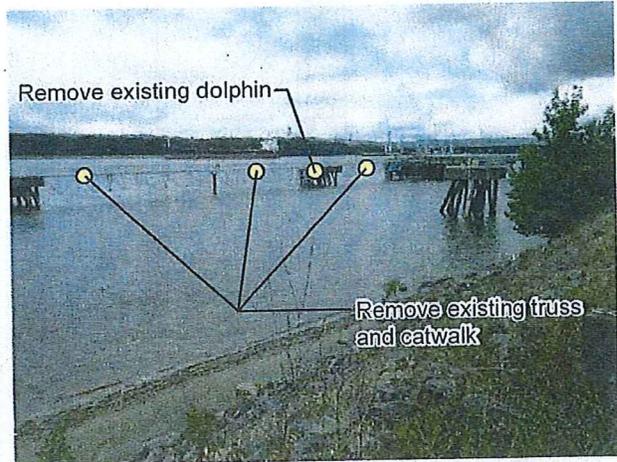


Photo 2: Existing Dolphin and Catwalk to be removed



Photo 3: Existing Mooring Dolphin



Photo 4: Existing Bank Conditions

PURPOSE: Bring the currently serviceable structure up to current seismic design standards for the continued use of the dock to berth marine vessels (NWP 3) and to install pipelines and associated facilities to allow for the transportation of crude oil from upland unloading and storage facilities to marine vessels (NWP 12).

APPLICANT: Tesoro-Savage

ADJACENT PROPERTY OWNERS:
Port of Vancouver, Washington Department of Natural Resources (WDNR),

FIGURE 7
Photo Sheet

Corps Ref: NWS-2013-962

TESORO SAVAGE VANCOUVER
ENERGY DISTRIBUTION TERMINAL

LAT/LONG: N 45.642/ W 122.719
NEAR/AT: VANCOUVER
COUNTY OF: CLARK
STATE OF: WA
APPLICATION BY:
TESORO SAVAGE PETROLEUM TERMINAL LLC
In: Columbia River
Page 7 of 7
January 2014

Kittitas Valley Wind Power Project

Monthly Project Update

August 18, 2015

Project Status Update

July Production Summary:

Power generated: 41,613 MWh
Wind speed: 9.7 m/s or 21.9 mph
Capacity Factor: 56.1%

Safety:

No incidents

Compliance:

Project is in compliance as of August 13, 2015.

Sound:

No complaints

Shadow Flicker:

No complaints

Environmental:

Nothing non-routine

Wild Horse

Below is the monthly operational/compliance update for Wild Horse. Please let me know if you have any questions.

Wind Production: July generation totaled 63,037 MWh for an average capacity factor of 31.08%.

Safety: No lost-time accidents or safety incidents to report in July.

Compliance/Environmental: Nothing to report.

EFSEC Monthly Operational Report

July, 2015

1. Safety and Training

- 1.1. There were no accidents or injuries during the month of July.
- 1.2. Conducted scheduled and required monthly training.
- 1.3. Conducted the scheduled safety committee meeting.

2. Environmental

- 2.1. Submitted the June Discharge Monitor Report (DMR) for outfall to EFSEC.
- 2.2. Submitted NOx startup modeling analysis for Units 1 and 2 to EPA for PSD Amendment 4 package.
- 2.3. Site paved surfaces were vacuumed for storm water run-off concerns.
- 2.4. Performed storm water dry season inspection. No drainage noted.
- 2.5. Submitted 2015 Q2 EDR.

3. Operations & Maintenance

- 3.1. Grays Harbor Energy (GHE) operated 31 days and generated 420,682 MWh during the month of July.
- 3.2. The capacity factor (CF) was 91.2% in July, and 35.1% YTD.
- 3.3. The availability factor (AF) was 100% in July, and 92.4% YTD.

4. Noise and/or Odor

- 4.1. There were no complaints made to the site during the month of July.

5. Site Visits

- 5.1. There were no site visitors during the month of July.

6. Other

- 6.1. Grays Harbor is currently staffed with 20 personnel. Two new operators begin on August 10th.
- 6.2. Installation of noise monitoring equipment is planned for August. The noise monitor has been purchased, and the installation engineering and planning is currently taking place.
- 6.3. Installation of the outfall monitoring recirculation line is on-going.

Chehalis Generation Facility----Monthly Plant Report - July 2015
Washington Energy Facility Site Evaluation Council

14 July 2015

Safety:

- There were no recordable incidents this reporting period and the plant staff has achieved 4638 days without a Lost Time Accident.

Environment:

- Waste water monitoring results are in compliance with the permit limits for the month of July 2015.

Personnel:

- Authorized plant staffing level is currently 19 with 19 positions filled.

Operations and Maintenance Activities:

- The Plant generated 231,081 MW-hrs in July and a capacity factor YTD of 16.9%.

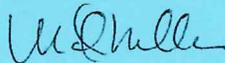
Regulatory/Compliance:

- There were no air emissions deviations, waste-water or stormwater deviations or spills during the month of July 2015.
- Sound monitoring: There were no noise complaints to report.

Carbon Offset Mitigation

The lighting efficiency bid package is prepared with the expectation to begin work in September.

Respectfully,



Mark A. Miller
Manager, Gas Plant

**Energy Northwest
EFSEC Council Meeting
August 13, 2015
(Steve McNutt)**

I. Columbia Generating Station Operational Status

Columbia is online at 100% power and producing 1128 MWs. The plant has been online for 51 days.

There are no other events, safety incidents, or regulatory issues to report.

II. WNP 1/4 Water Rights

No change from the June report:

The Department of Energy continues to work on the NEPA Environmental Assessment (EA) for WNP 1/4. Currently, DOE is awaiting the bid from their contractor for preparation of the EA. The NEPA Environmental Assessment will allow a new lease to be signed between EN and the Department of Energy, and thereby allow for use of the water rights obtained in January of this year. The preparation of the NEPA Environmental Assessment is expected to last through the summer and fall of 2015 with formal reviews to follow.

Energy Facility Site Evaluation Council

Enforcement Guidance

Policy #15-01

Purpose: To provide guidance to Energy Facility Site Evaluation Council (EFSEC or Council) staff and Council members on the enforcement process, and to provide for the consistent levying of penalties.

General

This document expresses the Council's current view of its enforcement policies. As a policy statement adopted under the Administrative Procedures Act, chapter 34.05 RCW, it is not intended to be binding as a formally adopted rule. The Council retains discretion to apply and adapt its enforcement efforts in individual cases to implement its overall duty to assure compliance with all site certification agreements and permits issued by the Council. Adoption of this policy advances the effective and equitable enforcement of the laws under the Council's responsibility.

Enforcement is a tool for protecting the public health and the environment. As directed by RCW 80.50.040(9), other agencies perform any on-site inspections required by the Council pursuant to interagency agreement. EFSEC, however, retains authority for determining compliance relative to monitoring. The inspecting agency may recommend a penalty for a violation to EFSEC based upon the penalty criteria adopted by the Council.

A violation does not necessarily result in the issuance of a penalty. A notice of incident and request for assurance of compliance may be issued when a violation is being corrected quickly and effectively by the violator, no substantial danger to humans or the environment resulted from the violation, and a penalty does not appear to be appropriate in light of the seriousness of the violation or as an incentive to secure future compliance.

The purpose of a civil penalty is to influence behavior, encourage compliance, and deter future violations. Penalty amounts will include a gravity component and an economic benefit component. The gravity component will carefully match the significance of the violation to the impact of the enforcement action. The Council will recover any economic benefit in order to promote a level playing field for those businesses that expend money to comply with environmental laws and regulatory requirements.

I. Range of Council Actions

EFSEC is authorized to take four types of enforcement actions to apparent violations. The range of actions allows EFSEC to use, in its discretion, an approach that is best suited to address the seriousness of the apparent violation, the potential damage to humans or the environment, the willingness and ability of the violators to make required corrections, and the speed with which corrective actions should be taken. WAC 463-70-070(1).

The four different types of enforcement actions in response to an apparent violation are:

- 1) The Chair of the Council, or the Chair's designee, may take emergency action to stop or eliminate any imminent or actual substantial danger to health or welfare of persons or the environment. The Council must consider any emergency action as soon as practical after the emergency action is taken, and may adopt, rescind, or modify the emergency action taken and may take other enforcement action. WAC 463-70-070(2).
- 2) The Council may issue a notice of incident and request for assurance and compliance when the Council believes: that a violation occurred, that the violation is being corrected quickly and effectively by the violator, that the violation caused no substantial danger to humans or the environment, and that a penalty does not appear to be appropriate in light of the seriousness of the violation or as an incentive to secure future compliance.

The Council may issue a notice of incident and request for assurance and compliance if it has probable cause to believe that a term or condition of a certificate agreement or permit has been violated. If the Council issues a notice of incident and request for assurance and compliance, within 30 days of service of the notice the certificate holder must provide the Council with a report of the incident and assurance of compliance, including appropriate measures to preclude a recurrence of the incident. The Council will review the assurance of compliance and may close out the matter by resolution or take such other action it deems necessary. WAC 463-70-070(3).

- 3) The Council may issue a notice of violation when the Council believes that a violation has occurred, that a violation is not being timely or effectively corrected, that a violation may cause a substantial risk of harm to humans or the environment, or that a penalty may be appropriate as an incentive to future compliance.

The Council may issue a notice of violation if it has probable cause to believe that a term or condition of a certificate agreement or permit has been violated. The notice must specify the provisions of law or rule, or the certificate agreement or permit which are alleged to have been violated and must include a requirement for corrective action to be taken. If the Council issues a notice of violation, it may include a penalty. WAC 463-70-070(4)(a).

- 4) A penalty may be issued pursuant to RCW 80.50.150, or RCW 74.90.431 if the violation is of the Washington Clean Air Act. See also RCW 70.94.422 and 90.48.262; WAC 463-70-070(4)(b), 463-74-040, 463-76-065(6), 463-78-230, 463-80-080, 463-85-240.

II. Imposition of Penalties

RCW 80.50.150(5) provides that every person who violates the provisions of certificates and permits issued or administered by the Council is subject to a penalty of up to \$5000 per day for every violation. This section remains in effect for any violations occurring before October 9, 2015. Any violation occurring on or after October 9, 2015, is subject to a penalty of \$10,000 per day per violation. (See SB 5310, codified as Chapter 39, Laws of 2015, 3rd special session.)

Each violation is considered a separate and distinct offense. In the case of a continuing violation, every day's continuance is deemed a separate and distinct violation.

The total penalty will consist of a gravity component and an economic benefit component.

Consistent Penalties – Gravity Component of Penalty

After EFSEC has decided to issue a penalty, the gravity component amount is calculated by using the Gravity Criteria Scoring Worksheet, which contains a penalty matrix. The worksheet asks several questions, and for each question, assigns points based on the response to the particular question. The number of points for all of the questions are then totaled to produce a score for that violation. In the case of a continuing violation, each day's continuance is deemed a separate and distinct violation. The score for the violation is then translated into a specific penalty amount by referring to the range of penalties contained in the penalty matrix. The greater the number of points, the greater the potential penalty. The penalty amounts determined for each violation are added together to produce up to the statutory maximum amount of the gravity component of the potential penalty.

For example, a regulated entity committed two separate permit violations. One violation is scored at 5 points and the second violation is scored at 16 points. Turning to the penalty matrix, the first violation produces a potential \$1000 penalty, and the second violation produces a potential \$3000 penalty. These two penalties are added together to produce a potential penalty of \$4000 under the gravity component. In another example, a violation generates a potential penalty of \$1000, but the violation was continuing and occurred for eight days. The potential maximum penalty under the gravity component for this continuing violation is \$8000 (\$1000 per day violation x 8 days = \$8000).

NOTE: The penalty matrix for determining the gravity component of a penalty is based upon a statutory daily maximum of \$10,000 per day, per violation. The last box in the penalty matrix contains a penalty of \$10,000 if the violation scores 35 points or above. The penalty matrix therefore, does not allow the

gravity component for a violation to exceed \$10,000 per violation. The \$10,000 maximum penalty amount is authorized pursuant to SB 5310, which was enacted during the 2015 third special session. (See Chapter 39, Laws of 2015, 3rd special session.) The effective date of this bill is October 9, 2015. For any violations occurring before October 9, 2015, the maximum penalty amount is \$5000 per day, per violation. Therefore, in determining the maximum penalty under the gravity component for violations occurring prior to October 9, 2015, the range of penalty amounts contained in the penalty matrix must be reduced by one-half.

The worksheet is not intended to determine if a penalty is appropriate, but rather it enables the program to be consistent in the penalty amounts imposed. The Gravity Criteria Notes may be used to help answer questions contained on the worksheet.

Council Discretion on Gravity Component of Penalty

When determining the amount of the gravity component of the penalty, Council will be mindful of the purpose of a civil penalty, which is to influence behavior, encourage compliance, and deter future violations. The Council may reduce, but not increase, the potential amount of the penalty generated through use of the Gravity Criteria Scoring Worksheet.

The factors that the Council will consider when deciding whether to reduce the gravity component of a penalty are:

- 1) The seriousness of the violation. This includes the gravity of the damage to human health, the environment, or the property of others. The Council will also consider the circumstances of its occurrence, including the duration of the violation, and whether the violator's actions were done knowingly.
- 2) The prior behavior of the violator. Specific criteria include the record of similar violations or a pattern of violations indicating general disregard of environmental laws and rules, and precautions taken to prevent the violation. The Council will take harsher steps against violators who have a history of non-compliance, repeated violations of the same or other regulations, and previous penalties.
- 3) Subsequent actions taken to rectify the problem. The Council will consider the degree the responsible party cooperated with EFSEC and other agencies to gain compliance, and how timely and appropriately corrective actions were taken. Corrective actions that are delayed will generally not be considered as favorably as corrective actions that are taken as soon as the violation was discovered.

The Council balances all of these factors to best achieve the purpose of a civil penalty. The Council shall describe the basis used for any reduction in the amount of the gravity component of the penalty.

Economic Benefit Component of Penalty

EFSEC will recover the economic benefit of noncompliance when penalizing violators. Economic benefit is usually found in the form of delayed or avoided costs, such as the failure to install necessary equipment, obtain necessary permits, conduct necessary tests, or employ a sufficient number of adequately trained staff. In recognition that the economic benefit component can be difficult to calculate, EFSEC may rely upon an economic analysis used by the inspecting agency for determining the economic benefit of noncompliance. It is general Council policy not to adjust or mitigate the economic benefit component. If the Council decides to adjust the economic benefit component, the reasons must be set forth in the final Council decision.

III. Issuance of Penalty

A penalty must be imposed in writing, either by certified mail with return receipt requested, or by personal service. The penalty notice must describe the violation with reasonable particularity and include the right to appeal of the Council's decision.

IV. Remission/Mitigation of Penalties

For violations occurring before October 9, 2015, a certificate holder may seek remission or mitigation of a penalty from the Council. The request for remission or mitigation must be filed with the Council within 15 days after *receipt* of the notice of violation. RCW 80.50.150(5). Note that the Council's regulation provides that this request must be filed within 15 days after *service* of the notice of violation. See WAC 463-70-070(4)(c)(i). The Council will rely upon the date of receipt for calculating the 15-day time period for requesting remission or mitigation. A decision by the Council to remit or mitigate a penalty is an administrative decision which the Council makes within its discretion. Remission or mitigation is only generally allowed to raise items not considered as part of the imposition of the original penalty.

The ability to request remission or mitigation of a penalty was repealed as part of SB 5310, which was enacted during the 2015 third special session. (See Chapter 39, Laws of 2015, 3rd special session.)

V. Appeal Rights

Any person may appeal a penalty imposed by the Council to the Council within 30 days after the date of receipt of the notice imposing the penalty. For violations occurring before October 9, 2015, if an application for remission or mitigation is filed, the appeal of the penalty must be filed within 30 days of receipt of notice from the Council setting forth the disposition of the application. Timely appeal to the Council is required before an appeal of the penalty may be made to superior court.

EFSEC Gravity Criteria Scoring Worksheet

The Gravity Criteria Scoring Worksheet is used to help determine the appropriate penalty amount for violations of any permit or site certification requirement by an entity regulated by EFSEC. When a continuing violation occurs, each day that the violation occurs may be calculated as a separate violation. The penalty amount generated through this worksheet constitutes the maximum gravity component of a penalty, which may be adjusted by EFSEC's discretion to achieve the purposes of applicable statutes and regulations. EFSEC will add any economic benefit gained from noncompliance to the penalty amount assessed.

1. Did the violator know, or reasonably should have known, about the requirement?
Yes – 5
No – 0
2. Is the violator a large business, small business, or an individual?
Large business – 5
Small Business - 3
Individual – 1
3. Does the violator have a history of violations?
Yes, same law or regulation – 5
Yes, laws or regulations other than the current violation that deal with the environment or natural resources or have a direct bearing on the violation being addressed – 3
No – 0
4. Did the violation result in a risk to the health, safety, welfare, the environment, property, a business and/or enjoyment of personal property?
Yes – 5
No – 0
5. Did the risk in Question #4 result in an impact or is it reasonably expected that an impact did occur?
Yes – 5
No - 0
6. What were the impacts in Question #5? (to determine the score, mark all impacts and add the scores together for the total points for this question)
 - A) Impacts to an individual's health, safety, or welfare – 5
 - B) Damage to the environment – 3
 - C) Impacts to an individual's enjoyment of personal property – 2
 - D) Damage to property or a business – 2
7. Did the violator take actions to correct the violation?
No, the violation could be corrected, but no actions were taken – 5

No, the violation could not be corrected, and the violator was uncooperative – 5

No, the violation could not be corrected, but the violator was cooperative – 3

Yes, the violation could be corrected, but the violator delayed taking action – 3

Yes, the violation could be corrected, and the violator took prompt action – 0

8. Was there an economic benefit to the violator from this violation, or did the violator expect an economic benefit was being derived from the violation?

Yes – 3

No - 0

Penalty Matrix

Points	1-3	4-6	7-9	10-12	13-15	16-17	18-19	20-21	22-23	24-25
Penalty	\$500	1,000	1500	2000	2500	3000	3500	4000	4500	5000

Points	26	27	28	29	30	31	32	33	34	35-35+
Penalty	\$5500	6000	6500	7000	7500	8000	8500	9000	9500	10,000

Penalty Amount from Penalty Matrix: _____

Penalty Amount from All Other Violations: _____

Economic Benefit from Noncompliance: _____

Total Possible Penalty: _____

EFSEC Gravity Criteria Notes

When scoring the eight questions, use the point values listed on the Gravity Criteria Scoring Worksheet as listed. Do not use other point values other than those specifically listed.

1. Did the violator know, or reasonably should have known, about the requirement?

It is not necessary to determine whether a violation was intended or willful in order to assess a penalty because many environmental laws contain a strict liability standard. Whether a violator knew, or reasonably should have known, about a requirement may be used to raise the amount of a penalty.

Knowledge may be obtained from a variety of sources, including previous technical assistance. Do not look only at direct contact between the agency and the violator addressing the laws and regulations violated. Knowledge may also be obtained by focused outreach efforts (such as to an industry group or to residents in a specific area) and general outreach efforts by federal, state, or local agencies, or activist/interest groups. The level of sophistication within the industry for complying with requirements and the accessibility of appropriate control technology may also be considered.

Claims of a lack of knowledge due to "not reading," "not listening," or "not seeing," etc. educational efforts by entities that have been reasonably presented to the violator should be considered a knowing violation.

2. Is the violator a large business or a small business?

Penalties should act as deterrents to future violations. The deterrent value of a penalty is relative to the ability of the violator to pay the penalty. A penalty that would have little impact to a large corporation may have a devastating impact to a small business.

Small and large businesses may be differentiated by using the definition of a "small business" under the Regulatory Fairness Act, Chapter 19.85 RCW. RCW 19.85.020(1) defines a "small business", in part, as a business entity with fifty or fewer employees.

3. Does the violator have a history of violations?

This question addresses the past behavior of the violator towards environmental laws, and other laws as they apply to the violator's operation in general. Violations considered for this question should be either state, federal, or local environmental/natural resources laws and regulations, or should have a direct bearing on the violation being addressed. A prior violation includes any act or omission resulting in a state, local, or federal environmental response,

including, but not limited to: a notice of incident and request for assurance and compliance, a notice of violation, a warning letter, an administrative order, or a penalty.

Violations that are for the same or very similar violation should be scored higher than for other violations (example: a violator of a water quality law who has violated water quality laws and regulations before would score higher than a violator who has violated air quality laws before but not water quality laws). The higher scoring is justified for the same or a similar violation because it is clear that the party was not deterred by the previous governmental enforcement response. Some facts indicating a "similar violation" are: violation of the same permit; violation of the same emissions standard; violation at the same process points of a source; violation of the same statutory or regulatory provision; and a similar act or omission.

4. Did the violation result in a risk to the health, safety, welfare, the environment, property, a business and/or enjoyment of personal property?

This question addresses whether the violation created a risk, not if the risk resulted in impacts. Certain types of violations might merit penalties, but do not create risks (example – some record keeping errors). This is a qualitative question that examines whether a risk was created by the violation, not the statistical probability that a risk exists or existed.

5. Did the risk in Question #4 result in an impact or is it reasonably expected that an impact did occur?

This question addresses the issue of whether impacts actually occurred or are reasonably expected to have occurred.

Two evaluations of this question are necessary:

- a) The first evaluation should be for documented impacts. Documentation may be through reliable complaints, observations, medical records, or other appropriate methods.
- b) The second evaluation deals with either quantified or estimated probabilities (more likely than not) based on modeling, professional knowledge or other defensible method. If the location, nature, and other factors concerning the violation are such that it is probable that impacts occurred, then it should be presumed that there were impacts even though they were not documented.

Persons or businesses are sometimes impacted, even severely impacted, and they do not know to report such impacts to the appropriate state agency. Therefore, it is not valid to presume that there were no impacts based upon no impacts being reported. Any presumption of no impacts should be based on the same type of evaluation as a presumption of impacts.

When considering the nature of the violation under this question, examine the magnitude of the violation in terms of type or amount of pollutant and resources affected, as well as the duration and/or number of specific violations.

6. What were the impacts in Question #5? (mark all impacts and add the scores together for the total number of points)

This question looks to address the severity/importance of the impacts created. Impacts to an individual's physical self are considered the most severe.

When answering this question, items "A) Impacts to an individual's health, safety, or welfare" and "C) Impacts to an individual's enjoyment of personal property" are intended to be used for situations where a specific harm and individual or business is identified.

Item "B) Damage to the environment" should be used when an impact to an area occurred, there is no specific individual or business identified, it would be reasonable to expect at least one person or business would be in the impacted area, and an impact to a person or business in the impacted area would be expected.

To determine the score for Question #6, mark all impacts and add the score for each impact together for a total score.

7. Did the violator take actions to correct the violation?

Review any action considered for this question by asking: "Does the action focus on correcting and/or mitigating impacts to the environment and/or human health?"

The Council may be more lenient if the violator promptly corrects a violation, and any underlying system problems, when these are pointed out by staff. Specific actions include purchasing new technology, making system changes, and training company personnel. Extra efforts such as paying for extra work shifts or paying a premium on a contract to have equipment installed more quickly may also result in more lenient action by the Council. The Council may be more lenient if the violator has an active and adequate compliance program in place.

The Council may also be more lenient if the violator self-reported the violation, and if the violator is cooperative and responsive during the investigation of the violation.

8. Was there an economic benefit to the violator from this violation, or did the violator expect an economic benefit would be derived from the violation?

The quantitative measurement of economic benefit is reserved for a separate calculation to be added to the penalty amount. This question is aimed at reflecting a greater severity of a violation if one of the reasons for the violation is a perceived economic benefit even when the benefit is not actually obtained. In order to support an evaluation of the perception of an economic benefit for the violation, look for statements such as "I can't afford to wait for a permit, or install such equipment." Statements such as these indicate a desire to delay or avoid costs.

DRAFT



EXPEDITED RULE MAKING

CR-105 (June 2004)
(Implements RCW 34.05.353)
EXPEDITED RULE MAKING ONLY

Agency: Energy Facility Site Evaluation Council (EFSEC)

Title of rule and other identifying information:

Chapter 463-60 WAC – Applications for Site Certification, subsection -540.
Chapter 463-76 WAC – Regulations for Compliance with NPDES Program, subsections -005, -010, and -025.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO

Name: Stephen Posner
Agency: EFSEC
Address: PO Box 43172, Olympia WA 98504-3172

AND RECEIVED BY October 19, 2015

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The purpose of this rulemaking is to clarify existing language in the two above cited WAC chapters. The proposed rule revisions will not substantively change the existing rules.

Reasons supporting proposal:

The proposed revisions will clarify EFSEC issuance of coverages under Ecology-issued NPDES general permits, authorized by RCW 90.48.160, RCW 90.48.262(2), and RCW 80.50.040. EFSEC issuance of coverages under Ecology-issued NPDES general permits implements the legislative directive to adopt rules which will provide maximum coordination and avoid duplication between the two agencies with respect to permits . . . RCW 90.48.262(2). In addition, the documents an applicant must file as part of a site certification application for certain permit coverage is clarified.

Statutory authority for adoption: RCW 90.48.262(2)

Statute being implemented: RCW 80.50.040

Is rule necessary because of a:

- Federal Law? Yes No
- Federal Court Decision? Yes No
- State Court Decision? Yes No

If yes, CITATION:

CODE REVISER USE ONLY

DATE

NAME (TYPE OR PRINT)

Stephen Posner

SIGNATURE

TITLE

EFSEC Manager

Name of proponent: EFSEC

Private
 Public
 Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Jim LaSpina	EFSEC, Olympia, WA	(360) 664-1362
Implementation....Jim LaSpina	EFSEC, Olympia, WA	(360) 664-1362
Enforcement.....Jim LaSpina	EFSEC, Olympia, WA	(360) 664-1362

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

AMENDATORY SECTION (Amending WSR 04-23-003, filed 11/4/04, effective 11/11/04)

WAC 463-76-005 Purpose. (1) This chapter establishes regulations specifying procedures and other rules which will be utilized by the council in implementing section 402 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The purpose of these regulations is to establish a state ((individual)) permit program, applicable to the discharge of pollutants and other wastes and materials to the surface waters of the state, which complies with the requirements of chapters 80.50 and 90.48 RCW, EPA, and applicable state laws and regulations through the issuance of individual permits or coverage under storm water general permits promulgated by the department of ecology.

(3) These regulations apply to:

(a) Any energy facility for which a certification agreement has been executed pursuant to chapter 80.50 RCW et seq.; and

(b) Any energy facility for which an application has been filed with the council for certification pursuant to chapter 80.50 RCW et seq.

(4) The authority for these regulations is based upon RCW 80.50.040(1), chapter 90.48 RCW, chapter 155, Laws of 1973, and the act.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-76-010 Definitions. As used in this chapter, the following terms shall have the meanings indicated below:

(1) "Act" means the Federal Water Pollution Control Act (FWPCA) as amended, (33 U.S.C. 1251, et seq.).

(2) "Administrator" means the administrator of the United States Environmental Protection Agency.

(3) "Applicable water quality standards" means all water quality standards of the state of Washington to which a discharge is subject under state and federal law((,)) including, but not limited to, those which are codified in chapters 173-200, 173-201A, and 173-204 WAC, and 40 C.F.R. 131.36.

(4) "Applicant" shall mean any person who has applied for an NPDES permit pursuant to this chapter.

(5) "Certification agreement" means that binding site certification agreement executed between an applicant under chapter 80.50 RCW and the state, and shall contain the conditions set forth in the NPDES permit to be met prior to or concurrent with the construction or operation of any energy facility coming under chapter 80.50 RCW.

(6) "Chair" means the chairman of the energy facility site evaluation council.

(7) "Contiguous zone" means the entire zone established or to be established by the United States under Article 24 of the Convention of the Territorial Sea and the Contiguous Zone.

(8) "Council" means the Washington state energy facility site evaluation council.

(9) "Council manager" means the individual holding the position of manager of the council.

(10) "Discharge of pollutant" and the term "discharge of pollutants" each mean:

(a) Any addition of any pollutant or combination of pollutants to surface waters of the state from any point source;

(b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source.

(11) "Domestic wastewater" means water carrying human wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments or other places, together with such groundwater infiltration or surface waters as may be present.

(12) "Domestic wastewater facility" means all structures, equipment, or processes required to collect, carry away, treat, reclaim, or dispose of domestic wastewater together with such industrial waste as may be present. In case of subsurface sewage treatment and disposal, the term is restricted to mean those facilities treating and disposing of domestic wastewater only from a septic tank with subsurface sewage treatment and disposal and an ultimate design capacity exceeding fourteen thousand five hundred gallons per day at any common point.

(13) "Ecology" means the Washington state department of ecology.

(14) "Effluent limitations" means any restriction established by the state of Washington or the administrator on quantities, rates and concentrations of chemical, physical, biological and other constituents which are discharged from point sources into surface waters, the waters of the state, including schedules of compliance.

(15) "Energy facility" means any energy facility, as defined in RCW 80.50.014.

(16) "EPA" means the United States Environmental Protection Agency.

(17) "General permit" means a permit which covers multiple dischargers within a designated geographical area, in lieu of individual permits being issued to each discharger.

(18) "Governor" means the governor of the state of Washington.

(19) "Municipality" means a city, town, county, district, association, or other public body created by or pursuant to state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Federal Water Pollution Control Act (FWPCA).

(20) "National Pollutant Discharge Elimination System (NPDES)" means the national system for the issuance of permits under section 402 of the act and includes the Washington state program (set forth in chapter 151, Laws of 1973) for participation in said system which has been approved by the administrator in whole pursuant to section 402 of the act.

(21) "New source" means any building, structure, facility or installation from which there is or may be the discharge of pollutants, the construction of which is commenced:

(a) After promulgation of standards of performance under section 306 of the act which are applicable to such sources; or

(b) After proposal of standards of performance in accordance with section 306 of the act which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within one hundred twenty days of their proposal.

(22) "NPDES application" means the uniform national forms for application for a NPDES permit (including subsequent additions, revi-

sions or modifications duly promulgated by the administrator pursuant to the act) as prescribed by the council for use in the Washington state NPDES program.

(23) "NPDES form" means any issued NPDES permit, the NPDES application and the NPDES reporting form, and any uniform national form developed for use in the NPDES program as prescribed in regulations promulgated by the administrator.

(24) "NPDES permit" means the permit incorporated in the certification agreement issued by the council which regulates the discharge of pollutants pursuant to section 402 of the act.

(25) "NPDES program" means that program of the state of Washington pursuant to section 402 of the act.

(26) "NPDES reporting form" or "discharge monitoring report" means the uniform national forms (including subsequent additions, revisions or modifications duly promulgated by the administrator pursuant to the act) for reporting data and information pursuant to monitoring and other conditions of NPDES permits.

(27) "Permit" means an authorization, license, or equivalent control document issued by the council to implement this chapter. "Permit" includes issuance of coverage under a storm water general permit promulgated by the department of ecology. "Permit" does not include any permit which has not yet been the subject of final council action, such as a "draft permit" or a "proposed permit."

(28) "Person" means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, local, state, or federal government agency, industry, firm, individual or any other entity whatsoever.

(29) "Point source" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

(30) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. This term does not mean:

(a) Sewage from vessels within the meaning of section 312 of the act; or

(b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the state in which the well is located, and if such state determines that such injection or disposal will not result in the degradation of ground or surface water resources.

(31) "Regional administrator" means the EPA's region X administrator.

(32) "State" means any of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(33) "Storm water discharge associated with industrial activity" means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufactur-

ing, processing or raw materials storage areas at an industrial facility. For energy facilities, the term includes, but is not limited to, storm water discharges from industrial facility yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined in 40 C.F.R. 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this subsection, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on facility lands separate from the facility's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. The following additional categories of facilities are considered to be engaging in "industrial activity":

(a) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 C.F.R. subchapter N;

(b) Facilities where construction activity includes clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more.

(34) "Surface waters of the state" means all waters defined as "waters of the United States" in 40 C.F.R. 122.2 that are within the boundaries of the state of Washington. This includes lakes, rivers, ponds, streams, inland waters, wetlands, ocean, bays, estuaries, sounds, and inlets.

(35) In the absence of other definitions as set forth herein, the definitions as set forth in 40 C.F.R. 122.2 and 122.26(b) shall be used.

AMENDATORY SECTION (Amending WSR 04-23-003, filed 11/4/04, effective 11/11/04)

WAC 463-76-025 Authorization required. No waste materials or pollutants may be discharged from any energy facility as defined in WAC 463-76-010 into surface waters of the state, except as authorized pursuant to this chapter or as authorized by the council pursuant to its authority under chapter 80.50 RCW for coverage under a general permit promulgated by the department of ecology. In administering this chapter, the council will seek maximum coordination and avoid duplication between the council and the department of ecology pursuant to RCW 90.48.262(2).

NEW SECTION

WAC 463-60-540 Other permit applications. The application for site certification shall include:

(1) A completed joint aquatic resource permit application (JARPA) for any proposed activities that would require the issuance of a water quality certification under section 401 of the Federal Water Pollution Control Act, or would otherwise require the issuance of a hydraulic permit approval;

(2) A notice of intent to be covered under a statewide general permit for sand and gravel promulgated by ecology; and

(3) A notice of intent to be covered under other permits that are otherwise issued by state agencies.