WASHINGTON STATE

ENERGY FACILITY SITE EVALUATION COUNCIL

Richard Hemstad Building

1300 South Evergreen Park Drive Southwest

Conference Room 206

Olympia, Washington

Tuesday, August 18, 2015

1:31 p.m.

MONTHLY COUNCIL MEETING

Verbatim Transcript of Proceedings

REPORTED BY: RYAN ZIEGLER, RPR, CCR #3348

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A P P E A R A N C E S

2

3 Council Members Present:

4 BILL LYNCH, Chairman
LIZ GREEN TAYLOR, Department of Commerce
5 CULLEN STEPHENSON, Department of Ecology
JOE STOHR, Fish and Wildlife
6 DENNIS MOSS, Utilities & Transportation Commission

7

Local Government and Optional State Agencies:
8
KEN STONE, Department of Transportation
9 GREG SHAFER, Clark County
LARRY PAULSON, Port of Vancouver
10 BRYAN SNODGRASS, City of Vancouver (via phone)

11

Attorney General's Office:
12
ANN C. ESSKO, Senior Counsel
13

14 EFSEC Staff:

15 CASSANDRA NOBLE, Administrative Law Judge
KALI WRASPIR
16 TAMMY MASTRO
STEPHEN POSNER
17 SONIA BUMPUS
JIM LASPINA
18 JOAN AITKEN

19

Guests:
20
RICHARD DOWNEN, Grays Harbor Energy
21 JENNIFER DIAZ, Puget Sound Energy (via phone)
TIM MCMAHAN, Stoel Rives (via phone)
22 STEVE MCNUTT, Energy Northwest (via phone)
JUDITH HILLIS, Golder Associates (via phone)
23 ERIC MELBARDIS, EDP Renewables (via phone)
MARK MILLER, Chehalis Generating Station (via
24 phone)

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P R O C E E D I N G S

CHAIR LYNCH: Good afternoon. Today is August 18th, 2015, the regular monthly meeting of the Energy Facility Site Evaluation Council. And could we please have the clerk call the roll?

MS. MASTRO: Regular Council.

Department of Commerce?

MS. GREEN TAYLOR: Liz Green Taylor here.

MS. MASTRO: Department of Ecology?

MR. STEPHENSON: Cullen Stephenson here.

MS. MASTRO: Fish and Wildlife?

MR. STOHR: Joe Stohr's here.

MS. MASTRO: Natural resources? Excused?

CHAIR LYNCH: Excused. Sorry.

MS. MASTRO: Utilities and Transportation Commission?

MR. MOSS: Dennis Moss is here.

MS. MASTRO: Tesoro/Savage Vancouver Energy Project, Local Governments, and Optional State Agencies.

Department of Transportation?

MR. STONE: Ken Stone is here.

MS. MASTRO: City of Vancouver?

Clark County?

MR. SHAFER: Greg Shafer present.

MS. MASTRO: Port of Vancouver?

MR. PAULSON: Larry Paulson's here.

MS. MASTRO: Chair, there is a quorum for the regular Council and for the Tesoro/Savage Project Council.

CHAIR LYNCH: Thank you. And we've heard from Mr. Snodgrass? Have we heard from Mr. Snodgrass?

MS. MASTRO: Chair, I have not.

CHAIR LYNCH: Okay. Thank you. He may call in later.

And could we please have anybody who wishes to identify themselves who are on the phone please do that now?

MR. MOSS: I'm hearing a dial tone.

MS. MASTRO: Chair, I think that --

CHAIR LYNCH: Pardon me?

MS. MASTRO: -- she's actually dialing in now.

CHAIR LYNCH: Okay.

MS. MASTRO: We may have lost the connection.

CHAIR LYNCH: We will use this opportunity, then, to have the Council Members look at the agenda and see if they'd like to make any proposed changes to the

1 agenda.
2 We -- just so that you know, we will be
3 taking Council action on one item today. That's the
4 enforcement policy adoption, and when we get to that point,
5 I'm going to suggest an oral amendment in -- the same oral
6 amendment in a few different places. It's a small item.
7 And when we vote, the reason why we had the
8 clerk mention that we had two different quorums is because
9 it's just the core Council Members that vote on items such
10 as adoption of rules or guidelines, and anything related to
11 Tesoro, the full Council would vote on those issues.
12 So when we take action later this morn- -- or
13 later this afternoon, it'll just be the regular core
14 Council Members who will be voting.
15 And now let's try again to see if we have
16 anybody who's on the phone, who wishes to identify
17 themselves, to identify themselves. There's a question
18 whether the line is working or not, but we'll go ahead and
19 proceed.
20 Could we take a few moments -- hearing that
21 there were no changes to the proposed agenda, can we take a
22 few moments and look over the meeting minutes for
23 July 21st? And I have to confess that I did not get all
24 the way through the minutes, so if -- hopefully, some of
25 you other Council Members did. But let's take a moment and

take a quick look through.

MR. POSNER: Chair Lynch, just to let you and the Council Members know, the -- the line is offline, but it's going to be repaired in a second here, hopefully.

CHAIR LYNCH: Okay.

MR. POSNER: Yeah.

CHAIR LYNCH: Well, the fact that we're just doing preliminary business here, I -- I don't think people will be missing all that much. Thank you.

It sounds like we might have our line up and running, and we're still at the point where we are -- Council Members are reviewing the minutes from the July 21 meeting.

I'm just glad to read Council minutes that don't have "S-I-C" following every sentence that I make, so that's a -- I must be getting a little better.

At this point in time, I will entertain a motion for approval of the minutes from July 21. Do we have a motion?

MR. MOSS: Chair Lynch, with the caveat that I have read the minutes only quickly, I would move that they be approved as written -- as transcribed.

CHAIR LYNCH: Do we have a second?

MR. STOHR: I'll second.

CHAIR LYNCH: We moved and seconded that we

adopt the Council meeting minutes from July 21st with the caveat that, after we have a better chance to look at these later, we can always amend those at our next Council meeting.

All those in favor say, "Aye."

MULTIPLE SPEAKERS: Aye.

CHAIR LYNCH: Opposed?

Motion carries.

And if there's anybody on the line who wishes to identify themselves at this time, you're welcome to do so now, though you're not required.

MR. SNODGRASS: Bryan Snodgrass for the City of Vancouver is on the phone.

MR. MCNUTT: Steve McNutt with Columbia Generating Station.

MR. MILLER: Mark Miller with Chehalis Generation.

MS. DIAZ: Jennifer Diaz with Puget Sound Energy Wild Horse Wind Facility.

MR. MCMAHAN: Tim McMahan, Stoel Rives law firm.

MS. HILLIS: Judith Hillis with Golder Associates.

MR. MELBARDIS: Eric Melbardis, EDP Renewables.

CHAIR LYNCH: Very good.

So let's go ahead and proceed with the updates from our projects.

And for the Kittitas Valley Wind Project, Mr. Melbardis?

MR. MELBARDIS: Yes. Good afternoon, Chair Lynch, EFSEC Staff. This is Eric Melbardis with EDP Renewables for the Kittitas Valley Wind Power Project. We have nothing nonroutine to report.

CHAIR LYNCH: So nothing nonroutine, and the project is in compliance. No incidents at the Kittitas Valley Wind Proj- -- Wind Power Project. Any questions for Mr. Melbardis? No. Thank you, Mr. Melbardis.

And now we'll hear next from Ms. Diaz for the Wild Horse Wind Power Project.

MS. DIAZ: Good afternoon, Chair --

(Bridge line interruption.)

MS. DIAZ: Good afternoon, Chair Lynch and Council Members. For the record, my name is Jennifer Diaz. I'm the project manager for Puget Sound Energy at the Wild Horse Wind Facility, and I have nothing nonroutine to report for the month of July as well.

CHAIR LYNCH: Nothing nonroutine from the Wild Horse Wind Power Facility. Any questions for Ms. Diaz? No questions. Thank you, Ms. Diaz.

MS. DIAZ: Thank you.

CHAIR LYNCH: And I see Mr. Downen with the Grays Harbor Energy Center is already at the mic- -- microphone. Please proceed.

MR. DOWNEN: Good afternoon, Chair Lynch, Council. Grays Harbor, this month, the only nonroutine things to report are Item 2.3, we had a vacuum truck come and swept the parking lot. That was a corrective action from an issue of copper and stormwater a year or two ago, so we -- whenever it's dry, we -- we vacuum the parking lot to make sure that there's no brake pad debris.

Also, Item 6.2, which is the installation of noise monitoring equipment and 6.3, installation of the outfall monitoring instrumentation recirc line. Both of those are actively being worked and installed at the plant right now, so.

CHAIR LYNCH: Excellent. And we --

MR. DOWNEN: We're working on these items.

CHAIR LYNCH: We'd like to commend Grays Harbor Energy for taking the initiative to install that continuous noise monitoring equipment, because that is something that has been, as you know, the source of complaints from time to time, and we were not in a position to -- to be able to determine if there were violations or not.

1 So your facility taking the impetus to go
2 ahead and install that equipment so we were -- are able to
3 determine if there's concerns, I think, actually works in
4 your favor and our favor both because we're able to know
5 if, in fact, an incident exceeds the standard or not. So
6 thank you very much, you and the members of your facility,
7 for installing that equipment.
8 MR. DOWNEN: You're welcome.
9 CHAIR LYNCH: Any questions for Mr. Downen at
10 this point? Thank you.
11 MR. DOWNEN: All right. Thank you.
12 CHAIR LYNCH: And the Chehalis Generation
13 Facility. Mr. Miller?
14 MR. MILLER: Yes, sir. Good afternoon, Chair
15 Lynch, Council Members, and Staff. My name is Mark Miller.
16 I'm the plant manager at the PacifiCorps Chehalis
17 Generating Facility. I have no nonroutine comments to add
18 today.
19 Did you hear me?
20 CHAIR LYNCH: Yes, I did. I'm sorry. I'm
21 just --
22 MR. MILLER: Okay.
23 CHAIR LYNCH: I'm just finishing looking
24 through your sheet that you provided.
25 Any questions for Mr. Miller?

1 Excuse me. Mr. LaSpina?
2 MR. LASPINA: Well, I -- I would just note --
3 I would just note, Chair Lynch, that apparently the
4 facility is preparing to implement some of its carbon
5 offset mitigation measures that it had proposed some time
6 ago, so that is actually being implemented.
7 CHAIR LYNCH: Oh, very good. I see that.
8 MR. LASPINA: I -- I think that's noteworthy.
9 CHAIR LYNCH: Yes. That's very good, and
10 we're pleased to have that mitigation package approved by
11 the Council and in the stages of being implemented. Thank
12 you. Thank you, Mr. Miller.
13 The Columbia Generating Station and WNP 1
14 and 4. Ms. Khounnala?
15 MR. MCNUTT: This is Steve McNutt, and I'm
16 filling in for Ms. Khounnala. Hopefully I'll be able to
17 answer any questions that you have in regards to Columbia
18 Generating Station operational status.
19 We've been online for 57 days. We're running
20 at 100 percent power and producing 1139 megawatts. We also
21 have a bring-back from last Council meeting regarding the
22 reactor feedwater valve. I have prepared a small,
23 probably-less-than-a-minute statement. Would you like me
24 just to give you a quick recap and then provide you maybe
25 with what I was asked as the -- the "why" question behind

1 the -- the issue that we had coming out of the outage?
2 CHAIR LYNCH: Sure. Please proceed.
3 MR. MCNUTT: Okay. So on June 30th, while
4 Columbia was making final preparations to raise power to
5 100 percent, the second reactor feedwater pump -- reactor
6 feedwater pump 102 Alpha, used to inject water into the
7 reactor -- failed to work.
8 Troubleshooting revealed that the discharge
9 valve between the pump and reactor was broken and failed to
10 open. The valve stem had pulled away from the valve disk.
11 The vendor, Furmanite, was brought in to
12 initiate an online fix and drill into the valve body and
13 move the broken valve in- -- internals out of the flow path
14 of the reactor feedwater. On July 22nd, the 2,000-pound
15 valve wedge was pushed out of the way, allowing Columbia to
16 raise to full power.
17 So to answer the "why" question, the valve,
18 which is a 27-inch, 1200-pound gate valve, and the stem
19 that normally operates the one-ton gate separated from the
20 gate. It's suspected that the gate became stuck due to
21 thermal expansion when it was actuated into the closed
22 position in preparation of R22.
23 However, the cause of this will not be fully
24 understood until next plant outage, when a full inspection
25 of the valve can be conducted.

1 Is there any questions?
2 CHAIR LYNCH: Any questions for Mr. McNutt?
3 MS. GREEN TAYLOR: Chair, I have a question.
4 CHAIR LYNCH: Yes. Ms. Green Taylor?
5 MS. GREEN TAYLOR: And when will that next
6 inspection take place?
7 MR. MCNUTT: Outages happen every two years.
8 So we just came out of this one, which was R22. R23 won't
9 happen until 2017.
10 MS. GREEN TAYLOR: Thank you.
11 MR. MCNUTT: You're welcome.
12 CHAIR LYNCH: Is there any additional --
13 because the time between inspections is so lengthy, are
14 there any additional monitoring or anything like that that
15 is done to make sure that it continues to work properly?
16 MR. MCNUTT: That question, I cannot answer,
17 and I would have to bring that back to you. I'm sorry. I
18 have limited knowledge about the -- the feedwater valve,
19 other than the statement that I provided.
20 CHAIR LYNCH: If you wouldn't mind just, at
21 the next -- if -- making a note of that and having some
22 feedback to the Council at the next meeting to just -- for
23 us to just make sure that there's sufficient oversight over
24 this particular part that failed until a more thorough
25 inspection can be done.

1 MR. MCNUTT: So I've got just a question, a
2 bring-back question would be, additional inspection between
3 now and then, are they being conducted?
4 CHAIR LYNCH: Right. Just that -- just is
5 there some sort of ongoing monitoring to make sure that
6 it's -- I don't know if you would need to call it an
7 inspection or whatever you call it, but just to make sure
8 that it continues to work in the way it's designed until
9 the next power outage.
10 MR. MCNUTT: All right. I'll ensure that's
11 brought back to next Council meeting.
12 CHAIR LYNCH: Great. Thank you.
13 Any other questions for Mr. McNutt?
14 Thank you, Mr. McNutt, who sometimes sounds
15 like Ms. Khounnala.
16 MR. MCNUTT: I also have to provide a status
17 at WNP 1/4 --
18 CHAIR LYNCH: Oh, yes. Please.
19 MR. MCNUTT: -- if I am allowed to.
20 CHAIR LYNCH: Yes, please. Go ahead.
21 MR. MCNUTT: All right. No change from the
22 June report; however, I have another prepared statement
23 from Ms. Khounnala. The Department of Energy continues to
24 work on the NEPA Environmental Assessment for WNP 1/4.
25 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 Energy Northwest 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.

No other events, safety in- -- incidences, or regulatory issues to report.

CHAIR LYNCH: Thank you.

Any questions for Mr. McNutt regarding WNP 1 and 4? No questions.

Thank you, Mr. McNutt.

MR. MCNUTT: You're welcome.

CHAIR LYNCH: Now we'll hear from Staff, Ms. Bumpus, regarding the Tesoro/Savage Vancouver Energy Distribution Terminal.

MS. BUMPUS: Thank you. Good afternoon, Chair Lynch and Council Members. So just a couple of updates on the permits.

For the NPDES construction permit, EFSEC sent a letter on June 23rd to the applicant requesting additional information to continue development of the -- of the permit, and on August 6th, EFSEC received a response

1 from the applicant. So that response is going to be
2 reviewed to see if we have all the information we need to
3 continue, so I will keep you informed on that as that
4 review continues.
5 For the NPDES industrial permit, on
6 August 6th, EFSEC requested additional information from the
7 applicant to continue the review of the industrial permit
8 application. Some of the information that we're requesting
9 is relative to additional information about tank car
10 washing at the rail and loading area, which is a
11 maintenance activity that was identified while doing the
12 review of the materials they had submitted.
13 CHAIR LYNCH: Excuse me. I'm going to -- can
14 you say that again? I'm sorry. This is about tank car
15 washing?
16 MS. BUMPUS: Right. So the letter that we
17 sent to the applicant on August 6th is requesting some
18 additional information from the applicant, and one of the
19 things that it's asking about is more information about a
20 maintenance activity that is occurring at the rail and
21 loading area that has to do with tank car washing. And so
22 we're asking the applicant to identify some more
23 information about -- about that in this letter that we
24 sent.
25 CHAIR LYNCH: And I just want to pursue this

1 a little bit more. So for -- how -- what information do we
2 have so far about -- because this is somewhat new
3 information, what information do we have already about
4 washing of tank cars?
5 MS. BUMPUS: So there is some -- some
6 information in the application for site certification in
7 the processed waste water section that talks at a very high
8 level about maintenance activities. Then there is also
9 some information in the engineering report, the NPDES
10 engineering report, that they submitted.
11 But again, it's -- it's in the section that
12 talks or lists some of the maintenance activities that
13 occur, but it doesn't explicitly talk about or in a high
14 level of detail talk about the washing of tank cars.
15 In the revised air permit, that is the -- the
16 piece of information that we have that has the most
17 information about this particular activity.
18 CHAIR LYNCH: So I'm -- I'm just thinking.
19 And so you've made a request for information. Is there any
20 indication when this information is likely to come back
21 regarding tank car washing?
22 MS. BUMPUS: We do not know when we'll get
23 that response from the applicant, but we have requested it,
24 and we've asked to know when they may be responding to
25 that.

1 CHAIR LYNCH: Okay. Just for the Council
2 Members' benefit, I'm just kind of probing a little bit
3 deeper on this, because I -- I -- it sounds to me like this
4 is significant information that we will need in order to
5 issue the permit.
6 Just having been on the Pollution Control
7 Hearings Board at one time, I remember well a case
8 involving Sea-Tac, not the third runway, but the Sea-Tac
9 NPDES permit, and there were issues regarding an oil-water
10 separator.
11 So when I hear "tank cars being washed,"
12 immediately, it jumps into my mind: What are the volumes
13 of water? Where's it -- where's it piped to? What's the
14 storage? Is this oil/water separated somehow?
15 So this is something that, in my mind, is
16 significant information that we need -- we need to have in
17 order to issue the permits. And I -- I took note that you
18 said that the in- -- most information you had on this was
19 not in water quality permit, in the NPDES permit, it was in
20 the air permit.
21 Any other --
22 MS. BUMPUS: Correct.
23 CHAIR LYNCH: Any other Council Members,
24 before Ms. Bumpus finishes, want to -- any more thoughts on
25 that?

Okay. Please go ahead.

MS. BUMPUS: For the notice of construction air permits, that is still underway. We're still working with Ecology to develop that permit, so I'll continue to keep you updated on that as we -- as we move forward.

And then the last thing regarding permits is the 401 Water Quality Certification. The public notice -- or rather, public comment period ended on August 1st, and I just wanted to report the number of comments that we received relative to the 401 totaled approximately 18,813 comments, which our Ecology contractor is reviewing, and we're going to continue to coordinate with them to review those comments.

Are there any questions about any of the permit updates?

CHAIR LYNCH: Any questions for Ms. Bumpus regarding the permits?

MR. STEPHENSON: You know, I actually do have a question.

CHAIR LYNCH: Yeah.

MR. STEPHENSON: Thank you, Chair Lynch.

This tank car washing is catching me as a surprise, and so I'm -- is it exterior washing? Interior washing? Do we know?

MS. BUMPUS: It's exterior tank car washing.

1 MR. STEPHENSON: Okay. Okay.
2 CHAIR LYNCH: Thank you, Mr. Stephenson.
3 And like -- one of the things that's -- I
4 mean, all these things are just rushing through my head at
5 the same time. If -- you know, how do they identify which
6 tank cars need washing? And it's a -- if a tank car needs
7 washing, is it covered with oil so it needs to be decoupled
8 from the train because it's leaking? Those are the sorts
9 of things I'm sure we'd want to know more about.
10 MR. STEPHENSON: Thanks.
11 CHAIR LYNCH: Yeah.
12 MS. BUMPUS: Okay.
13 CHAIR LYNCH: Thank you.
14 And go ahead, Ms. Bumpus, and continue.
15 MS. BUMPUS: I think the only other update is
16 just on the DEIS review. Staff received the preliminary
17 draft EIS. We have been reviewing it since last Wednesday,
18 and we're continuing and plan to reach our -- our deadline
19 of September 1st.
20 And in the meantime, it was also posted to
21 the EFSEC SharePoint site so that Council Members can begin
22 reading it and looking at that to familiarize themselves
23 with it. And that's -- that's all I have right now for the
24 DEIS. I'll continue to update you on how the -- the review
25 is going and the different milestones as we move forward.

1 CHAIR LYNCH: And the ballpark size of the
2 DEIS, with appendices, is how many pages?
3 MS. BUMPUS: Several. It's -- it is probably
4 about 2,000 pages. That -- but that would include the
5 appendices, but it could be a little more. The appendices
6 is -- is pretty large.
7 CHAIR LYNCH: Okay.
8 MS. BUMPUS: And so --
9 MS. MASTRO: Chair Lynch, I did combine the
10 appendices all into one document, and it's 3400 pages, and
11 the DEIS is 930-some pages, 950, right in there. And so
12 right around 4500.
13 MS. BUMPUS: So I was right about one of
14 those.
15 CHAIR LYNCH: Thank you, Ms. Mastro. We know
16 who to turn to if we have a question.
17 MS. BUMPUS: Yeah. I'm going to just punt
18 those to Tammy next time.
19 MS. MASTRO: Well, you're working with the
20 little pieces. I've got the big thing.
21 CHAIR LYNCH: So the -- so that is a little
22 bit of encouragement for Council Members to start looking
23 at the draft EIS, because there's a lot there to review.
24 Any further questions for Ms. Bumpus? No
25 questions.

1 Thank you. And does that complete your --
2 MS. BUMPUS: Yes.
3 CHAIR LYNCH: Thank you.
4 MS. BUMPUS: Thanks.
5 CHAIR LYNCH: Let's go ahead and turn to the
6 adoption of the enforcement policy, the draft enforcement
7 policy, and I'd just like to talk about it for a moment.
8 This has been cobbled together using a few
9 different resources. I looked at the Department of
10 Ecology's enforcement guidance for air -- their air quality
11 program, for their water quality program. I looked at the
12 UTC's enforcement policy. I looked at EPA's enforcement
13 policy.
14 I believe I looked at Board of Industrial
15 Insurance Appeals and tried to pull the best out of all of
16 those and put together a gravity criteria scoring
17 worksheet; a -- the gravity criteria notes, which help you
18 score on the -- the gravity criteria work- -- scoring
19 worksheet; and then the enforcement guidance. And I just
20 want to talk about some comments that were made to me by
21 some other Council Members recently.
22 First of all, there's the question of, if you
23 were to look at -- I'm looking right now at the enforcement
24 guidance, the Policy No. 1501, and on page 2 of that, under
25 No. 2, the second paragraph, I -- I mention that the

1 Council "may issue a notice of incident and request for
2 assurance and compliance if it has probable cause to
3 believe that a term or condition of a certificate agreement
4 or permit has been violated."
5 And you'll see under No. 3, which deals with
6 notices of violation, also the second paragraph uses the
7 term, "if -- if the Council has probable cause to believe
8 that a term or condition of a certifi- -- of a certificate
9 agreement or permit has been violated."
10 And this was raised to me by Ms. Green Taylor
11 about, "Well, what are we talking about when we're talking
12 about probable cause?" And I'd actually forgotten that
13 that was in the document, and the reason it's in the
14 document is that particular term, probable cause, is in our
15 WACs. It's not in statute, and I'm not quite sure why it
16 was put into our -- our WAC.
17 The WAC is 463-70-070, and I would like to,
18 as -- after we -- one of the things I'm doing as a result
19 of our legislation passing this past session, Senate
20 Bill 5310, which pertains to enforcement and appeals, is I
21 intend to amend our WACs.
22 And I'm hoping to amend our WAC to actually
23 get that term, "probable cause," out of there, because
24 probable cause is usually thought of in terms of a criminal
25 situation. You need -- an officer needs probable cause to

1 arrest somebody. You need probable cause to get a search
2 warrant.
3 And to use the term "probable cause" in a
4 civil situation like this might be confusing for some
5 people, so I think it's -- so after we amend our -- our WAC
6 to take out that term, I would then propose -- and we're
7 doing some other changes -- I would anticipate that we
8 would amend our guidance document here to actually then
9 take out that term, "probable cause," and replace it with
10 something like "reason to believe."
11 Because in most -- almost every instance, you
12 have a situation where the facility itself is
13 reporting the -- self-reporting the violations, so I think
14 that "reason to believe" is certainly met under those
15 circumstances, so that's what I -- I wanted to flag that as
16 part of our discussion today.
17 I also wanted to mention that Mr. Stone
18 flagged for me another change which I'd like to make
19 orally, and because the gravity criteria notes and the
20 gravity criteria scoring sheet talk about, as part of
21 the -- part of a violation, the assigned violat- --
22 creating risks or impacts to health and the environment and
23 to -- to people, it's also a violation if you impact or
24 create risk to the property of another person.
25 But that's -- the only place that that's

1 discussed in the guidance document itself is under the
2 Council discretion on gravity component of a penalty
3 regarding the seriousness of the violation, that you can
4 consider how -- the gravity of the damage to human health,
5 the environment, and then it says, "or the property of
6 others."
7 So I'm proposing that we add the following
8 phrase in four different places in the enforcement
9 guidance. And on page 1 in the enforcement guidance,
10 paragraph 2, under "General," and it would read,
11 "Enforcement is a tool for protecting the public health and
12 the environment" -- is how it currently reads, and I would
13 suggest that we say, "Enforcement is a tool for protecting
14 the public health, the property of others, and the
15 environment."
16 And similarly, in the paragraph right below
17 that, the third paragraph, it should say, "A notice of
18 incident and request for assurance of compliance may be
19 issued when a violation is being corrected quickly and
20 effectively by the violator; no substantial danger to
21 humans, the property of others, or the environment resulted
22 from the violation; and a penalty does not appear to be
23 appropriate in light of the seriousness of the violation or
24 as an incentive to secure future compliance."
25 And then on page 2, add that -- the -- that

same -- those same four words in two other spots. Under Sub 2, when we're talking about the four different types of enforcement action, under No. 2, it would read, "The Council may issue a notice of incident and request for assurance and compliance when the Council believes" -- and then I'll just skip ahead to say -- "the violation caused no substantial danger to humans, the property of others, or the environment," and then the sentence continues to its conclusion.

And then the last place I would recommend putting it is on No. 3, where similarly, it would say -- and I'm just going to read a portion of the sentence -- that "a violation may cause a substantial risk of harm to humans," and then insert "the property of others," and then it continues, "or the environment," and then it continues to the end.

So those are the places I would recommend adding that to the enforcement guidance document. We've discussed this a little bit at the last Council meeting, and I'll just kind of throw it open at this point in time to see if Council Members have any -- any comments about the proposed enforcement policy.

MR. STEPHENSON: Can I jump in?

CHAIR LYNCH: Mr. Stephenson?

MR. STEPHENSON: Thank you, Chair Lynch.

1 I've worked both as a regulator and as a
2 regulated entity, and I think we want to keep in front of
3 us that prevention is the best tool and most of our
4 entities that we deal with are good at helping us prevent
5 problems.
6 I'm happy that we have an enforcement policy
7 that we're developing. I think it's important to have. I
8 just want to make sure that we continue as a Council and a
9 Staff to push as hard as we can to work with our regulated
10 community to prevent things in the first place, because
11 it's a lot better place to be there than having to try to
12 figure out how we're going to enforce against a problem
13 that happened.
14 CHAIR LYNCH: Thank you.
15 Any other comments by Council Members?
16 At this point in time, I would entertain a
17 motion for adoption of the enforcement policy as amended by
18 the oral amendments.
19 MR. MOSS: Chair Lynch, I would move that the
20 Council adopt the enforcement policy as orally amended
21 today.
22 MS. GREEN TAYLOR: And I'll second.
23 CHAIR LYNCH: It's been moved and seconded
24 that the Council adopt the proposed enforcement policy as
25 amended today. All those in favor say, "Aye."

MULTIPLE SPEAKERS: Aye.

CHAIR LYNCH: Opposed?

Motion carries. Congratulations. EFSEC now has an enforcement policy.

MR. STEPHENSON: Do we get badges?

CHAIR LYNCH: And -- no, we don't get badges, Mr. Stephenson.

And to continue on regarding legislative update, I would just note that the UTC will have request legislation with the -- jointly with the UTC regarding our -- how we bill other facilities. This -- I think I might have mentioned this last time. That was actually introduced in the 2014 legislation -- legislature. It passed the House but did not pass the Senate. We've made a few small tweaks to that bill, and we intend to introduce it for the 2016 session.

I no longer intend to introduce legislation regarding streamlining our project for this 2016 session just because, taking a look at that draft EIS and knowing the amount of work that is in front of me and the rest of the Council, knowing that we still have some work to do on rules adoptions, I know I could get the bill drafted in time, but all the stakeholder work that you have to do to get a bill through the session, I just don't believe it's possible.

I do intend, though, to have a meeting with a number of -- of different stakeholders to let them know what we are intending to do, and maybe they can start thinking about what that legislation should look like for 2017.

And -- and at that point in time, we'll have the Tesoro application out of the way, we'll have a number of other things in place, so we can spend more time working on a more streamlined process. But I think the center point to that is still having a pre-application process as -- as part of the new legislation and also eliminating that language about "capacity to receive" in our definition and replacing it with some sort of storage capacity.

Turning to the rules update, those -- the air rules that we took action on last Council meeting, they are officially adopted. You also have some proposed rules in front of you, which CR-105 has been prepared, and that is another proposed expedited rule making.

And what these proposed rules have to do with is providing clarification that the Council does have authority to issue coverage under general permits that Ecology may have promulgated.

I think it -- after you look through our statutes and our regulations, you can tease out that that authority exists, but I think it's a lot more clear to

1 everybody if we state it much more clearly in -- in our
2 regulations that we can issue coverage under general
3 permits that Ecology issues. That will save a lot of time
4 and a lot of money for future applicants.
5 The second thing that the proposed rules do
6 is also makes it more clear what applicants should file if
7 they're looking for permit coverage from the Council. And
8 that would be, for example, if they're looking for a 401
9 certification or if they want a hydraulics permit that Fish
10 and Wildlife would normally issue, they should file a
11 completed JARPA. That's not a requirement right now, or at
12 least it doesn't say it right now.
13 So there's just some things like that which
14 we intend to take to expedited rule making, and we'll
15 probably, I anticipate -- Mr. LaSpina, probably the Council
16 acting in October? Is that correct?
17 MR. LASPINA: Yes, sir.
18 CHAIR LYNCH: So unless there are some
19 concerns, we would -- the Council would be working on
20 tho- -- adopting those in October. And it's a pretty
21 discreet action that we would be taking, but it would
22 provide a lot of clarity and a lot of comfort for those
23 future applicants coming down the line that they can get
24 general permit coverage and also what they need to file
25 and -- regarding other types of coverage.

The -- we are also working on WACs to deal with the legislation that just passed. And like I said, I'm -- it's taking a little bit longer than I thought, but we -- I'm working on our enforcement WACs to get rid of things like mention of probable cause and to make some other things more clear. I'm not exactly sure when I'll have that in front of the Council, but I'll do my best to get that done.

And also to let the Council Members know that we've also started an update to our water quality rules. And this is months out before this will be completed, but much as our Staff worked with Ecology to have our air rules updated, we're doing the same thing with our water quality rules so we can have rules for the 21st century regarding water quality in this agency.

And at this point, Mr. LaSpina, am I missing anything?

MR. LASPINA: No, sir.

CHAIR LYNCH: Anybody have anything else that they'd like to bring in front of the Council today? Very good.

With that, we are adjourned. Thank you for your participation.

(Meeting concluded at 2:14 p.m.)

* * * * *

C E R T I F I C A T E

STATE OF WASHINGTON
COUNTY OF KING

I, Ryan Ziegler, a Certified Shorthand Reporter in and for the State of Washington, do hereby certify that the foregoing transcript of the monthly meeting of the Washington State Energy Facility Site Evaluation Council on August 18, 2015, is true and accurate to the best of my knowledge, skill, and ability.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this August 27, 2015.

_____
RYAN ZIEGLER, RPR, CCR

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.

GHE • PO Box 26 • Satsop, WA 98583 • 360.482.4353 • Fax 360.482.4376

PACIFICORP
A BERKSHIRE HATHAWAY ENERGY COMPANY

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

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 Unapproved Minutes

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

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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	X No
Federal Court Decision?	☐ Yes	X No
State Court Decision?	☐ Yes	X No

If yes, CITATION:

DATE

NAME (TYPE OR PRINT)
Stephen Posner

SIGNATURE

TITLE
EFSEC Manager

CODE REVISER USE ONLY

(COMPLETE REVERSE SIDE)

Name of proponent: EFSEC

☐ Private
☐ Public
X Governmental

Name of agency personnel responsible for:

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Drafting.....	Jim LaSpina	EFSEC, Olympia, WA	(360) 664-1362
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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.