



STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL
PO Box 43172 • Olympia, Washington 98504-3172

August 31, 2016

Re: ORDER GRANTING CITY OF VANCOUVER'S MOTION FOR RULING THAT
EFSEC LACKS AUTHORITY TO ISSUE PRETREATMENT DISCHARGE PERMIT,
AND DENYING VANCOUVER ENERGY'S MOTION FOR DETERMINATION
REGARDING ISSUANCE OF INDUSTRIAL WASTE DISCHARGE PERMIT

Dear Interested Parties:

Enclosed please find the Council's Order with respect to agency jurisdiction over Vancouver Energy's proposed industrial discharge into the City of Vancouver's sewerage system. As discussed in the Order, the Council concludes that the City of Vancouver has jurisdiction over the proposed discharge. Therefore, the Council grants the City of Vancouver's motion and denies Vancouver Energy's motion.

Sincerely,

William H. Lynch, Chair

1 **BEFORE THE STATE OF WASHINGTON**
2 **ENERGY FACILITY SITE EVALUATION COUNCIL**
3

In the Matter of:
Application No. 2013-01

TESORO SAVAGE, LLC

VANCOUVER ENERGY DISTRIBUTION
TERMINAL

CASE NO. 15-001

ORDER GRANTING CITY OF
VANCOUVER'S MOTION FOR RULING
THAT EFSEC LACKS AUTHORITY TO
ISSUE PRETREATMENT DISCHARGE
PERMIT, AND DENYING VANCOUVER
ENERGY'S MOTION FOR
DETERMINATION REGARDING
ISSUANCE OF INDUSTRIAL WASTE
DISCHARGE PERMIT

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6 On August 29, 2013, Tesoro Savage Petroleum Terminal LLC (Vancouver Energy or Applicant)
7 applied for a site certification with the Energy Facility Site Evaluation Council (EFSEC or
8 Council) to construct and operate a new crude oil terminal. The proposed facility would be
9 located at the Port of Vancouver in the City of Vancouver (City), Washington.

10
11 As part of its proposal, Vancouver Energy¹ requested to discharge a maximum monthly average
12 flow² of 36,000 gallons per day of industrial wastewater into the City's sewerage system,
13 otherwise known as the City's publicly owned treatment works (POTW).³ The volume and type
14 of discharge requires Vancouver Energy to obtain an individual wastewater pretreatment
15 discharge permit.⁴

16
17 On August 28, 2013, the City notified Vancouver Energy that its POTW has capacity to receive
18 and treat the anticipated discharges from the proposed facility.⁵ On August 29, 2013, Vancouver
19 Energy included an application for a state waste discharge permit as part of its application for
20 site certification that was submitted to EFSEC.⁶ On February 25, 2014, Vancouver Energy
21 resubmitted its application for an industrial waste discharge permit.⁷ On February 19, 2016,
22 EFSEC notified Vancouver Energy that the City is responsible for issuing this permit rather than
23 EFSEC.⁸

24
25 This matter comes before EFSEC on cross motions by Vancouver Energy and the City. The
26 purpose of the motions is to establish whether EFSEC or the City is the responsible
27 governmental entity for authorizing a discharge of industrial wastewater into the City's POTW.
28

¹ References to Vancouver Energy also include consultants working on behalf of Vancouver Energy.

² The daily flows are averaged over a month-long period.

³ Applicant's Motion, Decl. of Carrico, Ex. A.

⁴ 40 CFR 403.6; 40 CFR 403.8(f)(1)(iii).

⁵ Applicant's Motion, Decl. of Carrico, Ex. A.

⁶ Applicant's Motion, Decl. of Carrico, Ex. B.

⁷ Applicant's Motion, Decl. of Carrico, Ex. C.

⁸ Applicant's Motion, Decl. of Carrico, Ex. D.

1 The Council reviewed and considered the following documents regarding the Applicant's
2 Motion:

- 3 1. [Applicant's] Motion for Determination Regarding Issuance of Industrial Waste
4 Discharge Permit (Applicant's Motion);
- 5 2. Declaration of Dale Johnson, with attached Exhibits A and B;
- 6 3. Declaration of Brian Carrico, with attached Exhibits A-D;
- 7 4. [Intervenors Columbia Riverkeeper, et al.'s] Opposition to Tesoro-Savage's Motion
8 for Determination Regarding Issuance of Industrial Waste Discharge Permit;
- 9 5. City of Vancouver's Response to Applicant's Motion for Determination Regarding
10 Issuance of Industrial Waste Discharge Permit (City's Response);
- 11 6. Second Affidavit of Frank A. Dick in Opposition to Applicant's Motion for Order
12 Ruling that EFSEC has Authority to Issue Pretreatment Discharge Permit, with
13 Attachments 6-8; and
- 14 7. Port of Vancouver USA's Response to City of Vancouver's Motion for Order Ruling
15 that EFSEC Lacks Authority to Issue Pretreatment Discharge Permit and to
16 Vancouver Energy's Motion for Determination Regarding Issuance of Industrial
17 Waste Discharge Permit.

18
19 The Council reviewed and considered the following documents regarding the City's Motion:

- 20
21 1. City of Vancouver's Motion for Order Ruling that EFSEC Lacks Authority to Issue
22 Pretreatment Discharge Permit (City's Motion) with Attachments 1-5;
- 23 2. Affidavit of Karen L. Reed in Support of City of Vancouver's Motion for Order
24 Ruling that EFSEC Lacks Authority to Issue Pretreatment Discharge Permit;⁹
- 25 3. Affidavit of Frank A. Dick in Support of City of Vancouver's Motion for Order
26 Ruling that EFSEC Lacks Authority to Issue Pretreatment Discharge Permit;
- 27 4. Vancouver Energy's Response in Opposition to the City of Vancouver's Motion for
28 Order Ruling that EFSEC Lacks Authority to Issue Pretreatment Discharge Permit
29 (Applicant's Response); and
- 30 5. Port of Vancouver USA's Response to City of Vancouver's Motion for Order Ruling
31 that EFSEC Lacks Authority to Issue Pretreatment Discharge Permit and to
32 Vancouver Energy's Motion for Determination Regarding Issuance of Industrial
33 Waste Discharge Permit.¹⁰

34
35 The Council has considered Vancouver Energy's and the City's motions and all supporting
36 materials regarding whether EFSEC or the City is the governmental entity responsible for
37 approving Vancouver Energy's discharge of wastewater into the City's POTW. The Council
38 denies Vancouver Energy's motion and grants the City's motion for the reasons set forth in the
39 Discussion below.¹¹

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⁹ The document identified as Attachment 2 in Ms. Reed's Affidavit is actually Attachment 4. This document is the MOA between EPA and EFSEC regarding the operation of the NPDES permit program.

¹⁰ The City and Vancouver Energy both agreed to forego reply briefs. City's Response at 5; Applicant's Response at 1, n.1.

¹¹ For purposes of the discussion, arguments advanced by Vancouver Energy and the Port of Vancouver will be grouped together under "Vancouver Energy". Similarly, arguments advanced by the City of Vancouver and the Environmental Intervenors will be grouped together under "City".

DISCUSSION

Does EFSEC have preemptive authority to issue all state and local permits and approvals necessary for construction and operation of the facility, and if so, how will EFSEC implement such authority?¹²

For the purpose of analyzing these cross-motions, it is helpful to restate this issue as: “Does EFSEC have the authority to issue a permit for the discharge of industrial wastewater from the proposed facility to the City’s POTW, when Vancouver already has an approved pretreatment program for its wastewater treatment plants?”

EFSEC does not have the authority to issue a permit for the discharge of industrial wastewater from Vancouver Energy’s proposed facility to the City’s POTW. The federal and state regulatory schemes for pretreatment of industrial discharges into POTWs, as discussed below, clearly establish that the City is primarily responsible for regulating and enforcing discharges into its POTW because it has an approved pretreatment program. EFSEC does not administer a pretreatment program approved by EPA and has no role to play in authorizing an industrial discharge into the City’s POTW.

Background on the Requirement for Pretreatment

In general, POTWs are principally designed to treat domestic sewage before the effluent is discharged into a receiving water body. In some cases, effluent may be applied directly to the land such as a golf course, or it may be reused by an industrial user such as in a boiler. The treatment process produces waste solids known as biosolids or sludge. POTWs are not able to remove many toxic or non-conventional pollutants that are present in industrial waste.

Certain industrial practices can interfere with the operation of POTWs, which can result in discharges of untreated or inadequately treated wastewater into waters of the United States. Some pollutants may cause interference with the operation of the POTW by inhibiting or disrupting the POTW’s treatment processes or operations, or its sludge processes, use, or disposal. Other pollutants are not amenable to biological wastewater treatment and pass through the POTW and affect the receiving water resulting in fish kills or other harmful effects. In addition, discharging gases and gas-forming substances can produce harmful fumes or potential explosions, which can jeopardize worker safety.¹³

The federal Clean Water Act was enacted to restore and maintain the integrity of the nation’s waters. Direct discharges of pollution into these waters are regulated by National Pollutant Discharge Elimination System (NPDES) permits. Indirect discharges of pollution by industries into POTWs are regulated through the National Pretreatment Program.¹⁴ The U.S. Environmental Protection Agency (EPA) administers the National Pretreatment Program within the federal Clean Water Act.¹⁵

¹² Order Clarifying EFSEC’s Process, Modifying Dispositive Motion Deadline, Summarizing Preliminary Issues, and Setting Hearing Dates, ¶ E at 2 (Feb. 3, 2016).

¹³ U.S. EPA Office of Wastewater Management, EPA-833-B-11-001, Introduction to the National Pretreatment Program iii (June 2011), available at https://www3.epa.gov/npdes/pubs/pretreatment_program_intro_2011.pdf.

¹⁴ See 40 CFR 403.3(i).

¹⁵ 33 U.S.C. Sec. 1251 *et seq.*

1 The National Pretreatment Program was established in order to reduce the risk of pollution to
2 health and the environment by: preventing the introduction of pollutants into POTWs which
3 would interfere with the POTW's operation or contaminate sewage sludge; and preventing the
4 introduction of pollutants into POTWs which will pass through the treatment works into
5 receiving waters or the atmosphere. An additional goal of the program was to improve
6 opportunities to recycle and reclaim wastewaters and sludges after wastewater treatment.¹⁶

7
8 Pretreatment involves the reduction of the amount of pollutants, elimination of pollutants, or the
9 alteration of the nature of pollution properties in wastewater before or in lieu of introducing these
10 pollutants into a POTW.¹⁷

11 12 The National Pretreatment Program is Primarily Implemented by Local Governments

13
14 EPA has authorized local governments to directly implement and enforce federal regulations
15 with respect to pretreatment. A local POTW with an approved pretreatment program is defined
16 as the "Control Authority".¹⁸ The Control Authority is the primary entity for developing,
17 administering, and enforcing the federal pretreatment standards under the federal and state
18 regulatory regime, including the development and implementation of an enforcement response
19 plan.¹⁹

20
21 If a state already has a federally approved pretreatment program, then a local government must
22 obtain state approval rather than federal approval for its pretreatment program.

23
24 In order for a state to obtain approval of its pretreatment program, a state must submit a request
25 for approval to EPA and demonstrate that it meets all necessary elements to administer the
26 program.²⁰ EPA approves a state's request to administer the pretreatment program through the
27 issuance of a memorandum of agreement (MOA).²¹ EPA approved the Washington State
28 Department of Ecology's (Ecology) pretreatment program on September 30, 1986,²² which
29 made the Director of Ecology the "Approval Authority" for purposes of approving any local
30 POTW pretreatment program within the state of Washington.²³

31
32 Vancouver applied to Ecology for approval of its pretreatment program, which required that the
33 City demonstrate that it met all federal criteria for its pretreatment program.²⁴ Ecology approved
34 Vancouver's pretreatment program on September 30, 1987.²⁵ Pursuant to federal law,
35 Vancouver became the "Control Authority" for ensuring that any discharges into its POTW meet
36 all federal criteria for pretreatment. The City is responsible for administering and enforcing the
37 federal program and any state or local standards.

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39
¹⁶ 43 Fed. Reg. 27736 (1978); 40 CFR 403.2.

¹⁷ 40 CFR 403.3(s); WAC 173-216-030.

¹⁸ 40 CFR 403.3(f)(1).

¹⁹ 40 CFR 403.5(c)(1), 40 CFR 403.8(f)(5).

²⁰ 40 CFR 403.10(f) and (g).

²¹ 40 CFR 123.24.

²² City's Motion, Attachment 1 (version updated in 1989).

²³ 40 CFR 403.3(f) and (g).

²⁴ 40 CFR 403.3(d), 40 CFR 403.8 and 403.9.

²⁵ City's Motion, Attachment 2 (Ecology Order No. DE 87-S188).

1 When the City's POTW was approved to operate a pretreatment program, Ecology, as the
2 Approval Authority, was required to modify the City's POTW NPDES permit to require
3 implementation of the approved pretreatment program as enforceable conditions of its NPDES
4 permit.²⁶ Ecology oversees the implementation of the pretreatment program through the
5 receiving of annual POTW reports from the City and conducting periodic audits and inspections.
6 If the City fails to properly implement pretreatment criteria and discharges pollutants into
7 national/state waters in violation of its NPDES Permit, it would be subject to potential sanctions
8 either from Ecology or EPA.

9
10 State Regulations Confirm Vancouver has Permitting Responsibility over the Proposed
11 Discharge

12
13 Three different chapters of Title 173 of the Washington Administrative Code (WAC) work in
14 concert to address the regulation of the pretreatment program. A municipality that operates a
15 POTW with pretreatment authority is delegated under state regulations the authority to establish
16 a permit program for commercial and industrial discharges into its sewerage system.

17
18 Chapter 173-216 WAC implements the state waste discharge permit program, which includes
19 regulation of industries discharging into ground and surface waters of the state and into
20 municipal sewerage systems. WAC 173-216-150 provides that qualified cities, towns, and other
21 municipal corporations who administer a local permit program, such as Vancouver, are required
22 to comply with Chapter 173-208 WAC and 40 C.F.R. Part 403 (the National Pretreatment
23 Program regulations). This chapter also expressly excludes discharges to a municipal sewerage
24 system operating under, and in compliance with, the applicable requirements of a local
25 pretreatment program approved under the federal Clean Water Act and WAC 173-216-150.²⁷
26 Because discharges into a POTW with an approved pretreatment program are administered
27 pursuant to a local permit program, no state waste discharge permit is required for such
28 discharges.²⁸

29
30 Chapter 173-208 WAC establishes the requirements for the locally administered permit program.
31 It authorizes Ecology to grant a municipality operating a POTW the authority to issue permits for
32 discharges of commercial or industrial wastes into the local government sewerage system.²⁹ A
33 municipality authorized to administer a permit program must adhere to the state or federal
34 pretreatment standards as a minimum requirement for commercial and industrial dischargers. If
35 more stringent pretreatment requirements are needed to meet effluent limits established in the
36 municipality's POTW NPDES permit, then the municipality must impose these requirements.³⁰
37 The process of granting or denying the discharges into the sewerage system, the monitoring and
38 inspection of the dischargers, and the taking of appropriate enforcement action are all included
39 within the definition of "permit program" administered by the municipality.³¹

40
41 A municipality that administers a permit program for discharges into its POTW is primarily
42 responsible for its effluent quality according to the terms of its NPDES permit, which Ecology

²⁶ 40 CFR 403.8(c).

²⁷ WAC 173-216-050(1)(c). *See also* RCW 90.48.165.

²⁸ The Council is also cognizant of RCW 80.50.040(10), which empowers EFSEC to "integrate its site evaluation activity with activities of federal agencies having jurisdiction in such matters to avoid unnecessary duplication."

²⁹ WAC 173-208-010 and 173-208-020.

³⁰ WAC 173-208-090(3).

³¹ WAC 173-208-040(10).

1 oversees under the terms of the municipality's POTW NPDES permit.³²

2 Chapter 173-220 WAC establishes the state individual NPDES permit program. All discharges
3 must be consistent with the terms and conditions of the NPDES permit.³³ Pursuant to WAC 173-
4 220-150(3), the NPDES permit "for a municipality which has received full local pretreatment
5 program approval must include:

6 (a) Granting of authority to issue permits under chapter 173-208 WAC;

7 (b) A requirement to develop, adopt, and enforce a program that is at least as stringent as
8 the department's program under chapter 173-216 WAC; and

9 (c) A requirement to report to the department at a specified frequency on the status of its
10 implementation."

11
12 The state regulatory scheme mirrors the federal regulatory scheme in that a municipality with an
13 approved pretreatment program directly implements and enforces federal and state regulations
14 with respect to pretreatment. This system of regulation acknowledges that the industrial
15 dischargers are not discharging into federal or state waters, but rather into the POTW. The
16 municipality, as the operator of the POTW, controls the amounts and types of effluent it receives
17 into its sewerage system through a separately operated permit system, which must be at least as
18 stringent as Ecology's program. Ecology ensures the municipality complies with all of the
19 pretreatment criteria through oversight of the municipality's POTW NPDES permit.

20
21 Consistent with state regulations, Vancouver operates its own permit system for discharges into
22 its POTW and is responsible for authorizing the industrial discharge from the proposed facility.
23 As a condition of approval, Ecology required Vancouver to "fulfill all the requirements of WAC
24 173-216 relating to the permit program."³⁴ The City's NPDES POTW permit devotes an entire
25 section to implementation of the industrial pretreatment program.³⁵ Ecology, as the issuer of the
26 City's POTW NPDES permit,³⁶ oversees that Vancouver remains in compliance with its permit.
27 Although EFSEC may issue NPDES permits for energy facilities, it is not authorized to issue a
28 NPDES permit for a POTW.³⁷ EFSEC has no authority to administer a POTW's NPDES permit.

29 30 EPA has Not Given EFSEC Approval to Administer a Pretreatment Program

31
32 Vancouver Energy argues that EFSEC has exclusive jurisdiction to issue industrial waste
33 discharge permits for energy facilities. Vancouver Energy cites the preemption authority
34 provided to EFSEC under RCW 80.50.110, the permitting authority provided to Ecology and
35 EFSEC under RCW 90.48.160, and the language in RCW 90.48.262 stating that permits for
36 energy facilities subject to chapter 80.50 RCW shall be issued by EFSEC. Vancouver Energy
37 contends that when EPA approved Washington State's program to implement the National
38 Pretreatment Program, EPA was aware that state statutes would confer this authority regarding
39 pretreatment to EFSEC for energy facilities. Vancouver Energy advances these arguments while
40 acknowledging that the NPDES permitting program and the National Pretreatment Program are
41 separate programs.³⁸

42
³² WAC 173-208-030(3), 173-208-090(4).

³³ WAC 173-220-150(1)(a).

³⁴ City's Motion, Attachment 2, at page 3 of 3.

³⁵ City's Motion, Attachment 3, Section S6 beginning at 14.

³⁶ WAC 173-220-040.

³⁷ WAC 173-220-240.

³⁸ Applicant's Motion at 12.

1 EPA delegated authority to EFSEC to issue NPDES permits for discharges to waters of the state
2 in a Memorandum of Agreement in 1979.³⁹ EFSEC and Ecology therefore share NPDES
3 permitting authority in Washington. A discharge into a POTW, however, is not a discharge into
4 waters of the state. Therefore, when EPA delegated authority to EFSEC to issue NPDES
5 permits, discharges to POTWs were not included as part of this delegation because an NPDES
6 permit cannot be used to authorize a discharge into a POTW. The discharge into the City's
7 POTW is governed by the City's local permit program authorized under Chapter 173-208 WAC.
8 The discharge from the POTW is a discharge to waters of the state and requires the City to have
9 an NPDES permit, which is overseen by Ecology.

10
11 As described earlier, a state agency must submit a request for approval to EPA and demonstrate
12 that it meets all necessary elements to administer a pretreatment program before approval of a
13 pretreatment program can be obtained. EFSEC never requested, and was never granted, federal
14 authority to permit discharges pursuant to the federal pretreatment program.

15
16 EPA has expressly notified EFSEC by letter that EPA has not approved EFSEC to administer a
17 pretreatment program. The letter specifically noted the absence of any reference to pretreatment:

18
19 During the April 20 meeting, you pointed out that the NPDES permit program for energy
20 related facilities was delegated to the Energy Facility Site Evaluation Council (EFSEC)
21 on August 15, 1979. In neither the application for delegation nor in the Memorandum of
22 Agreement between EFSEC and EPA was there any attempt to satisfy the requirements
23 of 40 CFR §403.10, which sets forth the required process and submittals for the
24 application for pretreatment delegation. Since there was no reference to pretreatment, we
25 conclude that the NPDES delegation to EFSEC did not include the pretreatment program.

26
27 May 18, 2000 letter from EPA.⁴⁰

28
29 This same May 18, 2000 letter from EPA also referenced the delegation of the pretreatment
30 program to Ecology on September 30, 1986. EPA observed that Ecology met the necessary
31 requirements in its application for delegation, and that only Ecology's staffing, resources, and
32 expertise were evaluated in making the determination to approve delegation of the pretreatment
33 program to Ecology. EPA concluded that the delegation of the pretreatment program "was made
34 solely to Ecology, not to EFSEC."

35
36 A comparison between EPA's MOA with Ecology and EPA's MOA with EFSEC supports
37 EPA's conclusion because there are significant differences between these two documents.⁴¹
38 Pretreatment is never mentioned in EFSEC's MOA. Ecology's MOA, however, contains an
39 entire section which address the pretreatment permitting program for the state. EPA specifically
40 recognized the authority for Ecology to administer the pretreatment program on behalf of the
41 state. The lack of similar language in EFSEC's MOA can only be construed as EPA failing to
42 recognize EFSEC as having any role with respect to a pretreatment program. It does not make
43 sense that EPA would dictate responsibilities to Ecology as part of a specific authorization to
44 administer a program, and somehow imply that EFSEC would also have authority over a

³⁹ City's Motion, Attachment 4.

⁴⁰ At the time of filing the motions in this case, the parties did not have this letter in their possession. See Applicant's Motion at 13 n.7. This letter was subsequently provided to the parties and is attached to this order.

⁴¹ Compare City Motion, Attachments 1 and 4.

1 program by remaining silent.

2
3 Vancouver Energy also asserts that EFSEC's past interpretation of its jurisdiction supports
4 EFSEC's jurisdiction over discharges into a POTW with pretreatment authority. In particular,
5 Vancouver Energy refers to a 1998 memorandum from the Attorney General's Office which
6 concluded that EFSEC had jurisdiction to issue Section 401 water quality certifications.⁴²
7 Vancouver Energy contends that there is no real distinction between authorizing a 401
8 certification and approving a pretreatment program. However, the May 18, 2000 letter from
9 EPA to EFSEC directly found that EFSEC was without authority to issue the necessary discharge
10 permit to the proposed Chehalis Generation Facility. EFSEC decided it would not assert
11 jurisdiction over the pretreatment discharge permit for the Chehalis Generation Facility based
12 upon this letter from EPA.⁴³ In that case, EPA issued the necessary discharge permit because the
13 state of Washington had not approved a pretreatment program for the City of Chehalis.

14
15 The Council concludes that Vancouver Energy's arguments fail because the National
16 Pretreatment Program is a federal program governed by federal law, under which EPA
17 exclusively authorizes which state agencies may oversee a pretreatment program. State statutes
18 cannot confer authority to administer federal laws and programs when specific federal
19 authorization is required, and EFSEC's preemptive authority does not extend to federal law.
20 EFSEC does not have the necessary federal authority to implement any pretreatment
21 requirements. EFSEC can only preempt state laws if it has the requisite authority to act in the
22 first instance.

23
24 The Council further concludes that the objectives of the federal and state regulatory schemes
25 regarding implementation of the National Pretreatment Program are met by the City of
26 Vancouver issuing the permit for the discharge from the proposed facility into the City's POTW
27 consistent with its state approved pretreatment program.

28
29 Finally, the Council is aware that it would be potentially disruptive to the operation of the City's
30 POTW if EFSEC was somehow able to assert jurisdiction over the proposed discharge. If
31 EFSEC directed the City to accept a discharge, the City could potentially be out of compliance
32 with its NPDES permit and be subject to sanction if it was unable to properly process the
33 effluent. The federal and state regulatory schemes do not contemplate a third party inserting
34 itself between the "control authority" and the "approval authority". The City would find itself
35 subject to two potentially inconsistent directives. Furthermore, it is not at all clear what forum
36 could be used to address a dispute between EFSEC, Ecology, and the City if a disagreement
37 arose regarding pretreatment.

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⁴² Applicant's Motion, Johnson Decl., Exs. A and B.

⁴³ EFSEC Order No. 745 at 3 (May 26, 2000).


ORDER

The City of Vancouver's Motion for Order Ruling that EFSEC Lacks Authority to Issue Pretreatment Discharge Permit is **GRANTED**.

Tesoro-Savage Petroleum Terminal LLC's Motion for Determination Regarding Issuance of Industrial Waste Discharge Permit is **DENIED**.

DATED and effective at Olympia, Washington this 31 day of August, 2016.

STATE OF WASHINGTON ENERGY SITE EVALUATION COUNCIL



William Lynch, EFSEC Chair



Dennis Moss, Utilities & Transportation Commission



Jaime Rossman,
Department of Commerce



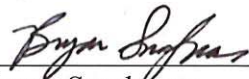
Dan Siemann,
Department of Natural Resources



Cullen Stephenson,
Department of Ecology



Joe Stohr,
Department of Fish and Wildlife



Bryan Snodgrass,
City of Vancouver



Greg Shafer,
Clark County



Kenneth Stone,
Department of Transportation

CERTIFICATE OF SERVICE

I, Kara Denny, am a citizen of the United States and a resident of the State of Washington. I am over 18 years of age and not a party to this action. My business address is 1300 S. Evergreen Park Drive S.W., Olympia, Washington 98504.

I HEREBY CERTIFY that on August 31, 2016, I served a copy of the ORDER GRANTING CITY OF VANCOUVER'S MOTION FOR RULING THAT EFSEC LACKS AUTHORITY TO ISSUE PRETREATMENT DISCHARGE PERMIT, AND DENYING VANCOUVER ENERGY'S MOTION FOR DETERMINATION REGARDING ISSUANCE OF INDUSTRIAL WASTE DISCHARGE PERMIT on the following parties:

<u>Party</u>	<u>Method of Service</u>
Kelly J. Flint Tesoro Savage Petroleum Terminal, LLC 110 Columbia Boulevard, Suite 108 & 110 Vancouver, WA 98660 Email: kellyf@savageservices.com Phone: 801/944-6600 <i>Applicant</i>	<input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service <input checked="" type="checkbox"/> email
<u>Party</u>	<u>Method of Service</u>
Jay Derr, Counsel Van Ness Feldman, LLP 719 Second Avenue, Suite 1150 Seattle, WA 98104-1728 Email: jpd@vnf.com Phone: 206/623-9372 Dale N. Johnson Email: dnj@vnf.com Tadas A. Kisielius Email: tak@vnf.com <i>Counsel for Tesoro Savage</i>	<input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service <input checked="" type="checkbox"/> email
<u>Party</u>	<u>Method of Service</u>
Matthew R. Kernutt, Assistant Attorney General Office of the Attorney General 1125 Washington Street SE PO Box 40100 Olympia, WA 98504-0100 Email: Matinkl@atg.wa.gov Phone: 360/586-0740 <i>Counsel for the Environment</i>	<input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service <input checked="" type="checkbox"/> email
<u>Party</u>	<u>Method of Service</u>
David F. Bartz, Jr. Schwabe, Williamson & Wyatt, P.C. 1211 SW Fifth Avenue, Suite 1900 Portland, OR 97204-3795 Email: dbartz@schwabe.com	<input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service <input checked="" type="checkbox"/> email

<p>Phone: 503/905-1427</p> <p>Alicia L. ("Lisa") Lowe Email: alowe@schwabe.com Phone: 360/905-1427</p> <p>Connie Sue Martin Email: csmartin@schwabe.com Phone: 206/407-1556</p> <p><i>Attorneys for the Port of Vancouver</i></p>	
<u>Party</u>	<u>Method of Service</u>
<p>Taylor Hallvik, Deputy Prosecuting Attorney Christopher Horne, Chief Civil Deputy Clark County Board of Commissioners Civil Division PO Box 5000 Vancouver, WA 98666-5000</p> <p>Email: taylor.hallvik@clark.wa.gov Phone: 360/397-2478</p> <p><i>Counsel for Clark County Board of Commissioners</i></p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service</p> <p><input checked="" type="checkbox"/> email</p>
<u>Party</u>	<u>Method of Service</u>
<p>E. Bronson Potter, Vancouver City Attorney City of Vancouver PO Box 1995 Vancouver, WA 98668-1995</p> <p>Email: bronson.potter@cityofvancouver.us Phone: 360/487-8500</p> <p>Susan Drummond, Counsel for the City of Vancouver Law Office of Susan Elizabeth Drummond 5400 Carillon Pt. Bldg 5000 Kirkland, WA 98033-7357</p> <p>Email: susan@susandrummond.com Phone: 206/682.0767</p> <p>Karen L. Reed, Assistant City Attorney City of Vancouver PO Box 1995 Vancouver, WA 98668-1995</p> <p>Email: Karen.reed@cityofvancouver.us Tammy.zurn@cityofvancouver.us Phone: 360/487-8500</p> <p><i>Counsel for City of Vancouver</i></p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service</p> <p><input checked="" type="checkbox"/> email</p>
<u>Party</u>	<u>Method of Service</u>
<p>Robert W. Ferguson, Attorney General Terence A. Pruit, Assistant Attorney General Natural Resources Division 1125 Washington Street SE PO Box 40100 Olympia, WA 98504-0100</p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service</p> <p><input checked="" type="checkbox"/> email</p>

<p>Email: terryp@atg.wa.gov & RESOlyEF@atg.wa.gov Phone: 360/586-0642</p> <p><i>Counsel for Washington State Department of Natural Resources</i></p>	
Party	Method of Service
<p>Kristen L. Boyles *Earthjustice 705 Second Avenue, Suite 203 Seattle, WA 98104</p> <p>Email: kboyles@earthjustice.org Phone: 206/343-7340</p> <p>Janette K. Brimmer Email: jbrimmer@earthjustice.org</p> <p>Anna Sewell Email: asewell@earthjustice.org</p> <p>Eudora Powell Email: epowell@earthjustice.org</p> <p>David Bricklin Bricklin & Newman, LLP 1424 Fourth Avenue, Suite 500 Seattle, WA 98101</p> <p>Email: bricklin@bnd-law.com Phone: 206/264-8600</p> <p>Bryan Telegin Email: telegin@bnd-law.com</p> <p>Peggy Cahill Email: cahill@bnd-law.com</p> <p>Anne Bricklin Email: miller@bnd-law.com</p> <p><i>*Counsel for Columbia Riverkeeper et al. Columbia Riverkeeper, Climate Solutions, ForestEthics, Friends of the Columbia Gorge, Fruit Valley Neighborhood Association, Sierra Club, Spokane Riverkeeper, and Washington Environmental Council</i></p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service</p> <p><input checked="" type="checkbox"/> email</p>
Party	Method of Service
<p>Linda R. Larson Marten Law, PLLC 1191 Second Avenue, Suite 2200 Seattle, WA 98101</p> <p>Email: llarson@martenlaw.com Phone: 206/292-2600</p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service</p> <p><input checked="" type="checkbox"/> email</p>

<p>Daniel Timmons Marten Law, PLLC 1001 SW Fifth Avenue, Suite 1500 Portland, OR 97217</p> <p>Email: dtimmons@martenlaw.com Phone: 503/243-2200</p> <p><i>Counsel for Columbia Waterfront LLC</i></p>	
Party	Method of Service
<p>Julie A. Carter Columbia River Inter-Tribal Fish Commission (CRITFC) 700 NE Multnomah Street, Suite 1200 Portland, OR 97213</p> <p>Email: carj@critfc.org Phone: 503/238-0667</p> <p>Robert C. Lothrop Email: lotr@critfc.org</p> <p><i>Counsel for CRITFC</i></p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service</p> <p><input checked="" type="checkbox"/> email</p>
Party	Method of Service
<p>Cager Clabaugh, International Longshore Warehouse Union Local 4 1205 Ingalls Road Vancouver, WA 98660</p> <p>Email: cagerclabaugh@aol.com Phone: 360/903-7678</p> <p>Jared Smith Email: mithared@yahoo.com Phone: 360/241-0314</p> <p><i>Representatives of International Longshore Warehouse Union Local 4</i></p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service</p> <p><input checked="" type="checkbox"/> email</p>
Party	Method of Service
<p>City of Spokane Office of the Mayor 7th Floor Municipal Building W. 808 Spokane Falls Blvd Spokane, WA 99201</p> <p>Nancy Isserlis, City Attorney Office of the City Attorney 5th Floor Municipal Building W. 808 Spokane Falls Blvd Spokane, WA 99201</p> <p>Email: nisserlis@spokanecity.org Phone: 509/625-6225</p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service</p> <p><input checked="" type="checkbox"/> email</p>

<p>Michael J. Piccolo, Assistant City Attorney Email: mpiccolo@spokanecity.org</p> <p><i>Counsel for City of Spokane</i></p>	
Party	Method of Service
<p>Brent H. Hall Confederated Tribes of the Umatilla Indian Reservation 46411 Timine Way Pendleton, OR 97801</p> <p>Email: Brenthall@ctuir.org Phone: 541/429-7407</p> <p><i>Attorney for Confederated Tribes of the Umatilla Indian Reservation</i></p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service</p> <p><input checked="" type="checkbox"/> email</p>
Party	Method of Service
<p>Joe Sexton Galanda Broadman PLLC 8606 35th Ave NE, Suite L1 P.O. Box 15146 Seattle, WA 98115</p> <p>Email: joe@galandabroadman.com Phone: 206/557-7509</p> <p>Amber Penn-Roco Galanda Broadman, PLLC 8606 35th Ave NE, Suite L1 P.O. Box 15146 Seattle, WA 98115</p> <p>Email: amber@galandabroadman.com Phone: 206/557-7509</p> <p><i>Attorney for The Confederated Tribes and Bands of the Yakama Nation</i></p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service</p> <p><input checked="" type="checkbox"/> email</p>
Party	Method of Service
<p>Donald L. English City Attorney, City of Washougal 12204 SE Mill Plain, Suite 200 Vancouver, WA 98684</p> <p>Email: english@elmbv.com</p> <p>Scott Russon City Attorney, City of Washougal 12204 SE Mill Plain, Suite 200 Vancouver, WA 98684</p> <p>Email: russon@elmbv.com <i>Counsel City of Washougal</i></p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service</p> <p><input type="checkbox"/> email</p>
Party	Method of Service
<p>Brian Bonlender, Director Department of Commerce 1011 Plum Street SE PO Box 42525 Olympia, WA 98504-2525</p> <p>Email: brian.bonlender@commerce.wa.gov</p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service</p> <p><input checked="" type="checkbox"/> email</p>

Phone: 360/725-4021	
<u>Party</u>	<u>Method of Service</u>
Maia D. Bellon, Director Department of Ecology 300 Desmond Drive PO Box 47600 Olympia, WA 98504-7600 Email: maia.bellon@ecy.wa.gov Phone: 360/902-1004	<input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service <input checked="" type="checkbox"/> email
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Jim Unsworth, Director Department of Fish and Wildlife 600 Capitol Way N. Olympia, WA 98501 Email: Jim.Unsworth@dfw.wa.gov Phone: 360/902-2200	<input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service <input checked="" type="checkbox"/> email
<u>Party</u>	<u>Method of Service</u>
David Danner, Chairman Utilities and Transportation Commission 1300 S. Evergreen Park Drive SW PO Box 47250 Olympia, WA 98504-7250 Email: ddanner@utc.wa.gov Phone: 360/664-1208	<input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service <input checked="" type="checkbox"/> email
<u>Party</u>	<u>Method of Service</u>
Department of Transportation 310 Maple Park Avenue SE PO Box 47300 Olympia, WA 98504-7300 Email:	<input checked="" type="checkbox"/> US Mail Postage Prepaid via Consolidated Mail Service <input type="checkbox"/> email

Hereby certify under penalty of perjury under the law of the state of Washington that the foregoing is true and correct.

DATED this 31st day of August, 2016, at Olympia, Washington.



Kara Denny, Legal Assistant