

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

3 In the Matter of:
4 Application No. 2013-01
5 TESORO SAVAGE, LLC
6 VANCOUVER ENERGY DISTRIBUTION
7 TERMINAL

Case No. 15-001
APPLICANT'S RCW 80.50.140(2)
PROCEDURAL OBJECTIONS

8 Applicant Tesoro-Savage Petroleum Terminal LLC, d/b/a Vancouver Energy
9 (hereinafter, "Vancouver Energy"), submits the following procedural objections pursuant
10 to RCW 80.50.140(2). These procedural objections are based on information currently
11 available to Vancouver Energy, and Vancouver Energy reserves the right to amend and/or
12 supplement them once it receives additional information.

13 During the August 15, 2017 State of Washington Energy Facility Site Evaluation
14 Council ("EFSEC") Monthly Council Meeting, Chairman Bill Lynch announced his
15 resignation as a member of EFSEC. He stated that the "main reason" for his resignation
16 was the "continued" and "attempted usurpation of this Council's as well as this Staff's
17 decision-making authority . . . that's being done by some people within the Attorney
18 General's office."¹ The following day, on August 16, 2017, Chairman Lynch sent a letter
19 to Governor Inslee notifying the Governor of his resignation and detailing the reasons for
20 his retirement.² In that letter, Chairman Lynch stated: "[m]y reason for deciding to retire
21

22 ¹ A transcript of Chairman Lynch's statements at the August 15, 2017 EFSEC Monthly Council
Meeting is attached hereto as Exhibit A.

23 ² Vancouver Energy obtained a redacted copy of Chairman Lynch's resignation letter to Governor
24 Inslee through a Washington State Public Records Act request. The redacted text might include
25 information that better describes the events that led Chairman Lynch to resign and could be
helpful in understanding the nature of any substantive or procedural error that occurred.
Vancouver Energy lodges these objections out of abundance of caution based on the information

1 is I am frustrated with some members of the Attorney General’s Office who overstep their
2 role on an ongoing basis.” Chairman Lynch then provided an example of the Attorney
3 General’s Office’s interference with the EFSEC deliberative process, but the example was
4 redacted on the purported basis of attorney-client privilege. Chairman Lynch’s letter
5 stated that “[t]his is just one small example of an AG not recognizing that they are
6 supposed to act on behalf of the client agency instead of furthering their own agenda. As
7 a result, a number of Council members were confused and frustrated that we were
8 revisiting decisions that were previously resolved.” Although the Attorney General is not
9 a member of EFSEC, but rather only counsel for the environment,³ the Attorney General
10 previously issued a press release indicating his opposition to the Vancouver Energy
11 Project.⁴ Vancouver Energy thus believes that the “agenda” Chairman Lynch referred to
12 in his resignation letter may be the Attorney’s General’s stated opposition to the
13 Vancouver Energy Project.

14 Vancouver Energy is not privy to EFSEC’s deliberations and is not currently in a
15 position to evaluate the extent to which the Attorney General’s Office activity constituted
16 a substantive or procedural error. Nevertheless, Chairman Lynch’s public accusations that
17 the Attorney General’s Office usurped EFSEC’s authority and his decision to resign on
18 those grounds—raise serious questions. Vancouver Energy is deeply concerned that the
19 integrity of the EFSEC process may have been compromised. To the extent this
20 constitutes a procedural error, and to preserve its rights to seek judicial review, Vancouver
21

22
23 currently available to it related to the events that led to Chairman Lynch’s resignation. A copy of
24 Chairman Lynch’s resignation letter – in the redacted form produced to Vancouver Energy – is
25 attached hereto as Exhibit B.

³ See RCW 80.50.030 and RCW 80.50.080.

⁴ A copy of the Attorney General’s July 29, 2016 press release is attached hereto as Exhibit C.

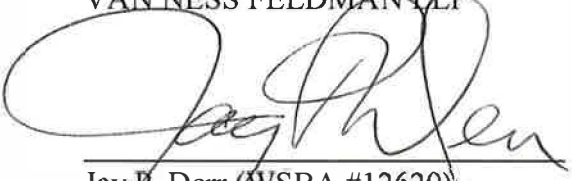
1 Energy files this objection at this time pursuant to RCW 80.50.140(2). Vancouver Energy
2 asserts the following objections:

- 3 • Violations of the appearance of fairness doctrine.
- 4 • Improper *ex parte* communications.
- 5 • Violation of the EFSEC Council’s deliberative duties and decision-making
6 authority under RCW 80.50.*et seq.* and WAC 463-30 *et seq.*

7 Because Vancouver Energy has, to date, not been provided a complete response to
8 its request for public records related to Chairman Lynch’s statements, Vancouver Energy
9 reserves the right to supplement this objection with additional objections in the future.

10 Dated this 14th day of September, 2017.

11 VAN NESS FELDMAN LLP



12
13
14 Jay P. Derr (WSBA #12620)
15 Tadas A. Kisielius (WSBA #28734)
16 Dale N. Johnson (WSBA #26629)

17 *Attorneys for Applicant Tesoro Savage*
18 *Petroleum Terminal LLC*

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1 **CERTIFICATE OF SERVICE**

2 I, Amanda Kleiss, declare as follows:

3 That I am over the age of 18 years, not a party to this action, and competent to be a
4 witness herein:

5 That I, as a legal assistant in the office of Van Ness Feldman, caused true and
6 correct copies of the following documents to be delivered as set forth below:

- 7 1. Applicant’s RCW 80.50.140(2) Procedural Objections; and this
- 8 2. Certificate of Service.

9 and that on September 14, 2017, I addressed said documents and deposited them for
10 delivery as follows:

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I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding, by authorized method of service pursuant to WAC 463-30-120(3).

EXECUTED at Seattle, Washington on this 14th day of September, 2017.



Amanda Kleiss, Declarant

EXHIBIT A

Verbatim Transcript of Monthly Council Meeting
Washington State Energy Facility Site Evaluation Council
August 15, 2017



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Verbatim Transcript of Monthly Council Meeting - 8/15/2017

WASHINGTON STATE
ENERGY FACILITY SITE EVALUATION COUNCIL
Richard Hemstad Building
1300 South Evergreen Park Drive Southwest
Conference Room 206
Olympia, Washington
August 15, 2017

MONTHLY COUNCIL MEETING
Verbatim Transcript of Proceeding

REPORTED BY: ANITA W. SELF, RPR, CCR #3032
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1 APPEARANCES
2 Councilmembers Present:
3 Bill Lynch, Chair
4 Jaime Rossman, Department of Commerce
5 Cullen Stephenson, Department of Ecology
6 Joe Stohr, Department of Fish and Wildlife
7 Dennis Moss, Utilities and Transportation
8 Commission
9
10 Local Government and Optional State Agencies:
11
12 Larry Paulson, Port of Vancouver (via phone)
13 Ken Stone, Department of Transportation
14 Bryan Snodgrass, City of Vancouver (via phone)
15 Greg Shafer, Clark County (via phone)
16 Assistant Attorney General:
17 Ann Essko, Senior Counsel
18 Staff in Attendance:
19 Stephen Posner
20 Jim LaSpina
21 Tammy Mastro
22 Sonia Bumpus
23 Joan Aitken
24 Ami Kidder
25 Christina Potis
26 Guests in Attendance:
27 Rich Downen, Grays Harbor Energy
28 Mark Miller, PacifiCorp Chehalis Generation
29 Facility
30 Guests in Attendance Via Phone:
31 Shannon Khounnala, Columbia Generating & WNP 1/4
32 Kristen Boyles, Earthjustice
33 Haley Edwards, Wild Horse Wind Power Project, Puget
34 Sound Energy
35 Eric Melbardis, EDP Renewables
36 Connie Sue Martin, Port of Vancouver

1 OLYMPIA, WASHINGTON; AUGUST 15, 2017
2 1:30 P.M.
3

4 CHAIR LYNCH: Good afternoon. Today is
5 Tuesday, August 15th, it is a little after 1:30 p.m.
6 and this is the August meeting for the Energy Facility
7 Site Evaluation Council.

8 Could we please have the clerk call the
9 roll.

10 THE CLERK: Department of Commerce?

11 MR. ROSSMAN: Jaime Rossman is here.

12 THE CLERK: Department of Ecology?

13 MR. STEPHENSON: Cullen Stephenson, here.

14 THE CLERK: Department of Fish and
15 Wildlife?

16 MR. STOHR: Joe Stohr is here.

17 THE CLERK: Natural Resources?

18 CHAIR LYNCH: Councilmember Siemann is
19 excused.

20 THE CLERK: Utilities and Transportation
21 Commission?

22 MR. MOSS: Dennis Moss is here.

23 THE CLERK: Local Governments and Optional
24 State Agencies, for the Tesoro project, Department of
25 Transportation?

1 MR. STONE: Ken Stone is here.

2 THE CLERK: City of Vancouver?

3 CHAIR LYNCH: Oh, I believe he'll be
4 joining us shortly.

5 THE CLERK: Clark County?

6 MR. SHAFER (by phone): Greg Shafer's on
7 the phone.

8 THE CLERK: Port of Vancouver?

9 MR. PAULSON (by phone): Larry Paulson's
10 on the phone.

11 THE CLERK: Chair, there is a quorum for
12 the regular Council and for the Tesoro project
13 Council.

14 CHAIR LYNCH: Thank you.

15 And if we could have the councilmembers
16 just take a quick look at the proposed agenda to see
17 if there's any suggested changes.

18 Hearing none, let's move forward. And at
19 this point in time, I'd like to have people on the
20 phone who haven't already identified themselves to
21 identify themselves if they wish, but you're not
22 required to.

23 MR. MELBARDIS (by phone): Eric Melbardis,
24 EDP Renewables.

25 MS. KHOUNNALA (by phone): Shannon

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| | |
|--|---|
| <p style="text-align: right;">Page 5</p> <p>1 Khounnala, Energy Northwest. 2 MS. EDWARDS (by phone): Haley Edwards 3 with Puget Sound Energy. 4 MS. BOYLES (by phone): Kristen Boyles, 5 Earthjustice. 6 MS. MARTIN (by phone): Connie Sue Martin 7 for the Port of Vancouver. 8 CHAIR LYNCH: Anyone else? 9 Okay. Let's go ahead and turn to the 10 minutes from the July 18th meeting. I have one 11 suggested change on page 15, line 5. There's a 12 reference to "soot fencing" and it should be "silt 13 fencing." 14 Does anyone else have any edits that 15 they'd like to flag for the Council? I think 16 Councilmember Stephenson is thinking that they should 17 also have installed soot fencing; is that correct? 18 MR. STEPHENSON: Yes. 19 CHAIR LYNCH: I see. 20 At this point in time, I will entertain a 21 motion to approve the July 18th minutes as amended. 22 MR. MOSS: Chair Lynch, I move the 23 approval of the July 18th, 2017, minutes as amended 24 this morning. 25 CHAIR LYNCH: Do we have a second?</p> | <p style="text-align: right;">Page 7</p> <p>1 two-month report at the October meeting, that would be 2 great. 3 Okay. Thank you. 4 Ms. Diaz, Wild Horse Wind Power Project. 5 Is she here? Mr. LaSpina, do you have anything to 6 mention regarding Wild Horse? I think they had a TAC 7 update or something, eagle update. 8 MR. LASPINA: Chair Lynch, I heard Haley 9 Edwards identify herself. She's also with PSE. 10 So is Haley on the line? 11 MS. EDWARDS: I am on the line. I know 12 Jennifer was planning on calling in, but she's off 13 site today so she may be having technical 14 difficulties. 15 There isn't anything nonroutine to report. 16 I do have an eagle update. 17 PSE continues to work closely and 18 diligently with the Fish and Wildlife Service on 19 completing the Eagle Conservation Plan and the related 20 Environmental Assessment. And in order to obtain an 21 Incidental Eagle Take Permit, the measures that are 22 described in the ECP would be incorporated into the 23 Incidental Take Permit as permit conditions. 24 PSE recently met with the Fish and 25 Wildlife Service to review the latest revisions to the</p> |
| <p style="text-align: right;">Page 6</p> <p>1 MR. ROSSMAN: I'll second. 2 CHAIR LYNCH: It's been moved and seconded 3 that we approve the July 18th, 2017, minutes as 4 amended. 5 All those in favor, say "Aye." 6 MULTIPLE SPEAKERS: Aye. 7 CHAIR LYNCH: Motion carries. 8 At this point in time, we'll turn to our 9 facility updates, and first Mr. Melbardis for the 10 Kittitas Valley Wind Project. 11 MR. MELBARDIS: Good afternoon, EFSEC 12 Council. This is Eric Melbardis with EDP Renewables 13 for the Kittitas Valley Wind Power Project. We have 14 nothing nonroutine to report for the period. 15 CHAIR LYNCH: Any questions for 16 Mr. Melbardis? Thank you, Mr. Melbardis. 17 Oh, actually, before -- I don't know if 18 the outside people stay on for the entire meeting or 19 not, but at this point in time, I'd like to announce 20 that, because there's nothing pressing during the 21 month of September in terms of a need for a council 22 meeting, I think the time would be better spent if we 23 just all keep working on what we're working on. 24 So I'm going to cancel September's council 25 meeting, and if our facilities can just provide a</p> | <p style="text-align: right;">Page 8</p> <p>1 ECP, and through additional coordination with the 2 Service, there are a few sections to be further 3 refined. Once those items are complete, the Service 4 will provide information to complete the Environmental 5 Assessment. 6 Once the Eagle Conservation Plan is 7 finalized, PSE will provide a copy to EFSEC and to 8 TAC, and then once the final Environmental Assessment 9 is completed, the Fish and Wildlife Service will 10 release the EA in the Federal Register for public 11 review and comment, and then will make a determination 12 on whether to issue an Incidental Eagle Take Permit 13 for Wild Horse. 14 In order to obtain an Incidental Eagle 15 Take Permit, it is required to resolve past take [sic] 16 of eagles through a standard settlement agreement 17 process. PSE has entered into a standard civil 18 settlement agreement with the Fish and Wildlife 19 Service to resolve the four eagle fatalities at Wild 20 Horse. 21 When developing the settlement agreement, 22 the Service considered the previous actions PSE has 23 taken in an effort to mitigate the fatalities, such as 24 providing funding to Hawk Watch International and Blue 25 Mountain Wildlife Rehab, as well as conservation</p> |

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1 measures implemented under the SCA.
2 Under the settlement, PSE will implement
3 corrective actions in the form of research and
4 development of eagle detection and deterrent
5 technologies and report to the Fish and Wildlife
6 Service.
7 CHAIR LYNCH: And Haley, can you remind me
8 of your last name, please?
9 MS. EDWARDS: Edwards.
10 CHAIR LYNCH: Edwards?
11 MS. EDWARDS: Yes.
12 CHAIR LYNCH: Thank you.
13 Ms. Edwards, what I would like a little
14 bit better understanding of is, it says the Eagle
15 Conservation Plan, after it's finalized, a copy is
16 provided to the TAC. But do they have any input
17 regarding the settlement agreement with the feds, with
18 the US Fish and Wildlife Service, or is it just in
19 terms of what's the appropriate corrective measures?
20 MS. EDWARDS: The settlement agreement
21 process is a standard template that the Fish and
22 Wildlife Service developed, and it's available --
23 there was a chief directive that came out in November
24 of -- I can't remember if it was last November, I
25 think it was, and so that outlines the specific

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1 prescriptions that would go into a settlement, so
2 that's a confidential process between PSE and the Fish
3 and Wildlife Service.
4 CHAIR LYNCH: Okay.
5 So the role of the TAC at this point,
6 then, is just to receive a copy of the plan once it's
7 finalized and review it and then incorporate that into
8 their other measures; is that correct?
9 MS. EDWARDS: Correct.
10 CHAIR LYNCH: Okay.
11 MS. EDWARDS: Yes. And the Eagle
12 Conservation Plan and the settlement agreement process
13 are separate, but in order to complete an ECP and
14 obtain a permit, you must resolve those prior eagle
15 fatalities. And the way to do that is through a
16 settlement agreement.
17 CHAIR LYNCH: Okay.
18 Any questions for Ms. Edwards?
19 Thank you. Let's move on.
20 MS. EDWARDS: Thank you.
21 CHAIR LYNCH: Ms. Knaub, Energy Northwest?
22 MS. KHOUNNALA: Yes. So Debbie Knaub is
23 actually out of the office today, so it's me, Shannon
24 Khounnala, filling back in to address the Council.
25 CHAIR LYNCH: We like you so much better.

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1 MS. KHOUNNALA: In regard to -- we'll
2 start off first with Columbia Generating Station, and
3 I would like to provide a brief update to the Council
4 which is not on your report that was prepared last
5 week.
6 And the update we have is regarding a
7 recent event with one of our radwaste shipments.
8 While I've provided the Council updates this past
9 spring and the winter of a shipment that occurred last
10 November where we used an improper container for a
11 low-level radwaste shipment, you may have seen some
12 recent news or newspaper articles regarding another
13 low-level radwaste shipment event that occurred this
14 past July.
15 The most recent shipment followed our new
16 processes and procedures to prevent a repeat of
17 sending the waste in the wrong container.
18 Unfortunately, the new processes and procedures didn't
19 prevent a human performance error of providing the
20 wrong manifest document to the driver.
21 Specifically, in this case, there was an
22 original version of the manifest and a revised version
23 of the manifest that we prepared, and we failed to
24 provide the revised version.
25 In regard to the shipment itself, the US

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1 Ecology disposal site did accept our shipment once we
2 provided the correct manifest. And while our disposal
3 privileges are suspended with the Department of
4 Health, the Department is ready to reinstate our
5 shipping privileges once we transmit a response to
6 them containing our cause determination.
7 I will say that we're taking our time with
8 our cause determination so that we get this right. We
9 have the ability to store waste for prolonged periods
10 of time, and we will do so until such time that we
11 believe we're ready to fully address the gap in this
12 performance.
13 In terms of safety, and I think the
14 message that often gets lost in news reporting, is
15 that this did not have a risk to the public health or
16 the environment. However, it certainly exposed that
17 our new processes and procedures did not prevent this
18 human error, and it is a deeply embarrassing
19 occurrence.
20 For now our evaluation is ongoing. It
21 contains members of our executive team participating
22 in our evaluation. And our expectation is that we
23 will respond to the Department of Health in the coming
24 weeks once we feel we are ready to do so.
25 At this time, if there's any questions

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1 about this event, I will try to answer them.
 2 Otherwise, we don't have any other updates to report
 3 out for Columbia Generating Station.
 4 CHAIR LYNCH: Any questions for
 5 Ms. Khounnala? Yes, Councilmember Stephenson.
 6 MR. STEPHENSON: Thank you, Chair Lynch.
 7 This may be a question for EFSEC staff,
 8 but as a councilmember, I hear good commentary from
 9 Ms. Khounnala about this incident and that things are
 10 fine. What's our responsibility to make sure that
 11 that's correct?
 12 CHAIR LYNCH: We have no responsibility
 13 over this particular area. She's just --
 14 Ms. Khounnala's just updating us about what's
 15 happening at the facility, but EFSEC does not regulate
 16 hazardous waste or radwaste shipments.
 17 So though having worked on this area
 18 before, people have to rely upon those manifests. I
 19 mean, it's -- even though it's not -- even though the
 20 waste itself was acceptable, this is an area where
 21 paperwork is -- it's really important. You need to
 22 get it right.
 23 So Mr. LaSpina?
 24 MR. LASPINA: I just wanted to clarify for
 25 Councilmember Stephenson, there may be some confusion

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1 because EFSEC was delegated the authority to issue
 2 radionuclide emissions licenses, but only -- in only
 3 that area are we delegated any of Department of Health
 4 responsibilities. We have no -- no authority
 5 whatsoever, no jurisdiction whatsoever over radwaste
 6 shipments, and we're not delegated that.
 7 CHAIR LYNCH: Correct.
 8 And Ms. Khounnala, do you have anything
 9 else for us today?
 10 MS. KHOUNNALA: No, certainly not in
 11 regard to that. And just to emphasize that really
 12 providing the Council an update on that is meant to
 13 keep you informed as best as possible. Certainly when
 14 Energy Northwest and Columbia Generating Station
 15 appear in the news, we want to be as forthcoming and
 16 transparent as possible to the Council as well.
 17 CHAIR LYNCH: Thank you, Ms. Khounnala.
 18 And we appreciate the updates, because people often
 19 ask us as councilmembers these questions. And even
 20 though it's not within our jurisdiction, it's nice to
 21 be able to know what's going on.
 22 MS. KHOUNNALA: Absolutely. We recognize
 23 that.
 24 CHAIR LYNCH: Thank you.
 25 Mr. Miller, Chehalis Generation Facility?

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1 MR. MILLER: Good afternoon, Chair Lynch,
 2 councilmembers and Staff. I'm Mark Miller with the
 3 PacifiCorp Chehalis Generation Facility.
 4 I have nothing nonroutine to report today,
 5 but if there are any questions from this report or
 6 past reports, I'd be happy to answer them.
 7 CHAIR LYNCH: Any questions for
 8 Mr. Miller? No questions.
 9 MR. MILLER: All right. Thank you.
 10 CHAIR LYNCH: Thanks for coming.
 11 Now we'll turn to Mr. Downen, Grays Harbor
 12 Energy Center.
 13 MR. DOWNEN: Good afternoon, Chair Lynch,
 14 councilmembers and Staff.
 15 The only two nonroutine things I would say
 16 on our report are items 2.5 -- oh, and I'm Rich
 17 Downen, plant manager at Grays Harbor Energy.
 18 Item 2.5 just talks about Approval
 19 Conditions 2, 5 and 6 of the Cooling Tower Notice of
 20 Construction. It's just the paperwork wrap-up of the
 21 cooling tower replacement project. So we submitted
 22 those, and I believe since this report came out that
 23 those were accepted by ORCAA and EFSEC staff so --
 24 CHAIR LYNCH: In fact, the NOCs were
 25 approved by this Council -- issuance of the NOCs were

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1 approved by this Council previously, and that's when
 2 we were saying why are issuing -- why do we have to
 3 issue an NOC when we have this other permit in place,
 4 but --
 5 MR. DOWNEN: Right.
 6 CHAIR LYNCH: Okay. Good. Thank you.
 7 MR. DOWNEN: And really that -- that all
 8 worked out, that that notice was required because of
 9 the change in the drift eliminator efficiency, which
 10 is what these conditions are tied to so...
 11 The other item is item 2.6, and it's just
 12 a further -- further report on the arsenic and mercury
 13 levels in the outfall samples, that they are
 14 continuing to drop, and these were below the minimum
 15 level documented in the draft engineering report that
 16 was done before the cooling tower replacement.
 17 In a conversation -- just as a follow-up
 18 to that, last week there was a conversation with I
 19 believe it was -- I can't remember the party, but it
 20 was -- their assessment was that the only arsenic in
 21 the outfall at this point is dissolved and is due to
 22 cycling up of the water that's coming from the raining
 23 well.
 24 So that's -- that's what we had
 25 anticipated and that will -- that will get documented

4 (Pages 13 to 16)

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1 in a more official manner as we start doing the post
2 cooling tower replacement sampling regime that's
3 actually starting this week. So that's good news.
4 And I didn't have anything else.
5 CHAIR LYNCH: Any questions for
6 Mr. Downen?
7 Mr. LaSpina, did you want to add something
8 regarding expectation of a -- or a possibility of a
9 PSD coming our way?
10 MR. LASPINA: Thank you, Chair Lynch.
11 There's been a long running effort to
12 revise the Grays Harbor Energy PSD -- the existing
13 Grays Harbor Energy PSD permit.
14 With the recent approval of our SIP, we
15 were able to -- EFSEC was able to work with Ecology
16 and ORCAA permit writers -- that's the Olympia Region
17 Clean Air Agency -- they are nearing completion of a
18 draft.
19 And after some internal review and review
20 by the permittee's people, we are proposing to go to
21 public notice with the permit probably in late
22 October. We foresee seeking the Council's approval to
23 go to public notice at the October council meeting.
24 And then once we got that approval, we would start
25 public notice soon after. And that just assumes that

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1 there's not going to be any new surprises or anything
2 like that.
3 CHAIR LYNCH: And the big difference, as
4 Mr. LaSpina said, is the -- because we have the SIP
5 approved now by EPA, we no longer have to co-issue the
6 air permits with EPA. In this current one, which has
7 been -- Grays Harbor has a PSD permit now, but people
8 don't know what it means, that's the problem, and it's
9 been that way for over eight years.
10 So by us getting our own authority to
11 issue these permits, we can actually have a functional
12 PSD permit that everybody understands and can
13 implement and we can put this matter to bed, which it
14 is a long time coming, and we appreciate Grays Harbor
15 Energy's efforts working with us to help make this
16 happen.
17 MR. DOWNEN: Looking forward to it being
18 behind us.
19 CHAIR LYNCH: Very good.
20 Any questions for Mr. Downen?
21 All right. Tesoro/Savage Vancouver Energy
22 Distribution Terminal project update, Ms. Bumpus.
23 MS. BUMPUS: Thank you. Good afternoon,
24 Chair Lynch and councilmembers.
25 I'll start with my SEPA update. With the

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1 exception of Air Quality and Environmental Health
2 Impact Analysis in the document, we've completed
3 several sections of the FEIS. We are meeting with
4 Mr. Posner this week to talk about the impacts that
5 have been assigned and the mitigation measures that
6 have been developed. So we're going to be talking
7 about that.
8 I foresee we'll have a couple more
9 discussions as we finalize the rest of the document.
10 I mentioned a while ago that this is with the
11 exception of Air Quality and Environmental Health, and
12 that's because we are working with the applicant, and
13 have been working with the applicant for several weeks
14 to obtain additional information that's needed to
15 complete that assessment.
16 So on June 30th we had some information
17 that was provided, and then we sent them a memo, dated
18 July 17th, where we asked for a pretty comprehensive
19 list of information that we need. And as of
20 yesterday, it looks like we've received the last of
21 those requests, so our consultants are reviewing that
22 information now. If we find that we need more
23 information from them, or we need more clarification
24 about the information they've provided, we'll keep
25 working with them until we have it.

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1 And one last thing on that. Once the
2 information's incorporated into the document, we will
3 again have a discussion with Mr. Posner about what
4 those impacts are in those respective sections, and
5 what the mitigation measures are that Staff proposes.
6 Before I move on to permits, are there any
7 questions about the SEPA work?
8 CHAIR LYNCH: Any questions for Ms. Bumpus
9 regarding SEPA?
10 Please continue.
11 MS. BUMPUS: Okay. For the notice of
12 construction, last month we had approximately 2,500
13 comments or so that were in the database, and as we've
14 continued to go through the submissions, we are now at
15 about 2,970 comments that EFSEC staff and the permit
16 writer will need to go through. Some of these may be
17 non-substantive. That's still to be determined. But
18 in any case, we've definitely found additional
19 comments that we need to look at. So that's where we
20 are. I'll keep you updated on how that work
21 progresses, but we certainly have found additional
22 comments that we need to look at.
23 For the NPDES Construction Permit, I don't
24 have any substantial updates there. The number of
25 comments in the last update from the database is there

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1 were about 183 comments to address there. And those
 2 have been worked on. I don't have the number of how
 3 many are resolved at this point, but we'll need to
 4 double-check all of those.
 5 For the NPDES Industrial Stormwater
 6 Permit, we currently have 86 comments. It's in public
 7 comment now. On July 18th, the Council made a
 8 tentative determination to issue for public comment
 9 the Draft NPDES Permit, and we noticed that on
 10 July 19th, and the public comment will end on
 11 August 22nd.
 12 So we have been working to line up the
 13 meeting logistics for the August 22nd meeting in
 14 Vancouver, and I'll just go over the timeline and
 15 where that's going to be.
 16 It's going to be held in Vancouver at the
 17 Clark College Columbia Technical Center. The address
 18 is 18700 SE Mill Plain Boulevard. The meeting will
 19 begin at 1:00 p.m., and will close at 9:00 p.m. or
 20 until last speaker. This information is all on
 21 EFSEC's website. We're going to have a dinner break
 22 between 4:00 and 5:00 p.m.
 23 And that's all I have. That concludes my
 24 update.
 25 CHAIR LYNCH: Any questions for Ms. Bumpus

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1 about her updates?
 2 Mr. Posner, do you want to proceed with
 3 the application extension?
 4 MR. POSNER: Yes.
 5 Good afternoon, Chair Lynch,
 6 councilmembers. In your packets is a letter from
 7 Vancouver Energy. It is dated August 11th, and it is
 8 a request to extend the application processing time.
 9 We are currently operating under an expiration date of
 10 August 31st, 2017. This will extend it -- this
 11 request would extend it out till November 30th, 2017.
 12 We've had a number of these requests
 13 before this one, and this is allowed under RCW
 14 80.50.100, which allows for extensions which are
 15 mutually agreed to by the applicant and the Council.
 16 So Staff recommendation is to approve this
 17 request. I can answer questions if councilmembers
 18 have any. We also have Jared Larrabee representing
 19 Vancouver Energy here if councilmembers have any
 20 questions of him.
 21 And that's all I have.
 22 CHAIR LYNCH: Thank you, Mr. Posner.
 23 I agree with the recommendation to approve
 24 this extension till the end of November. I think this
 25 appears to be realistic.

Page 23

1 Do we have any questions for Mr. Posner?
 2 In that case, I would entertain a motion
 3 to extend the processing of the Tesoro/Savage
 4 application till the end of November as requested.
 5 MR. STONE: So moved.
 6 CHAIR LYNCH: Do we have a second?
 7 MR. STEPHENSON: Second.
 8 CHAIR LYNCH: It's been moved and seconded
 9 that the Council approve the requested extension for
 10 the Tesoro/Savage proposal until the end of November.
 11 All those in favor, say "Aye."
 12 MULTIPLE SPEAKERS: Aye.
 13 CHAIR LYNCH: Opposed? Motion carries.
 14 MR. SNODGRASS (by phone): Brian Snodgrass
 15 on the phone says "aye" as well.
 16 CHAIR LYNCH: Thank you, Mr. Snodgrass. I
 17 thought I could tell your breathing.
 18 Let's see. Is there any further
 19 information to come before the Council regarding
 20 Tesoro/Savage?
 21 MR. POSNER: None that I have.
 22 CHAIR LYNCH: Okay. So let's just turn to
 23 Other. And I wanted to give the Council another look
 24 at that proposed rule that we have underway.
 25 I've got -- and I wanted to point out a

Page 24

1 small change to WAC -- the change we're making to WAC
 2 463-76-062, and we didn't have -- if you look on
 3 subsection (1), after the word "modified," we are
 4 striking the words "suspended or," and after "revoked
 5 in whole or in part," we're adding the words "or
 6 terminated."
 7 And the reason we're doing that is because
 8 we're making it consistent not only with Ecology's
 9 rule but with federal law. Under federal law, you
 10 really -- you're not even able to suspend an NPDES
 11 permit, but you can terminate an NPDES permit.
 12 So that's -- while we're going through
 13 making this one change, we thought we'd do this
 14 consistency change as well. So we'll just have it in
 15 front of the Council, and that rulemaking proposal is
 16 on its way.
 17 Mr. LaSpina, did you want to add anything
 18 about where we are in the process?
 19 MR. LASPINA: Yes, Chair Lynch.
 20 The public notice will appear in the State
 21 Register starting tomorrow, August 16th, and public
 22 notice will run through September 15th. And it is the
 23 CR-101, which is the pre -- I don't remember the exact
 24 term, but it's the initial rulemaking notice to the
 25 public that lets the public know that we are doing

1 rulemaking.
 2 And after that, the Council -- Staff and
 3 the Council will consider comments, and later on issue
 4 a CR-102, which -- which unlike the CR-101, the CR-102
 5 is very specific. And that starts another 30-day --
 6 roughly 30-day public notice. We get public comments
 7 and consider those comments and then issue a CR-103,
 8 which is an Order of Adoption. So that's basically
 9 the process in summary.

10 CHAIR LYNCH: Any questions for
 11 Mr. LaSpina on the rulemaking?
 12 I just wanted to let councilmembers know
 13 that the August 22nd meeting in Vancouver, that will
 14 be my last meeting as a member of the EFSEC Council.

15 I intend to stay on with the Council
 16 through the end of September, or maybe the end of the
 17 first week of October. I think we can still move
 18 forward with our work. I'll be providing a letter to
 19 the governor in the next couple of days regarding
 20 that.

21 But I need to say that the main reason for
 22 this action is I've been tired of the continued --
 23 and I'll just call it the attempted usurpation of this
 24 Council's as well as this Staff's decision-making
 25 authority, and that's being done by some people within

1 CERTIFICATE
 2
 3 STATE OF WASHINGTON)
) ss.
 4 COUNTY OF KING)
 5
 6

7 I, ANITA W. SELF, a Certified Shorthand
 8 Reporter in and for the State of Washington, do hereby
 9 certify that the foregoing transcript is true and
 10 accurate to the best of my knowledge, skill and
 11 ability.

12 IN WITNESS WHEREOF, I have hereunto set my hand
 13 and seal this 28th day of August, 2017.
 14



15
 16
 17 *Anita W. Self*
 18 ANITA W. SELF, RPR, CCR #3032
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1 the Attorney General's office. And I think this job
 2 is hard enough.

3 And with that, we're adjourned.
 4 (Hearing concluded at 2:02 p.m.)

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EXHIBIT B



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

August 16, 2017

Dear Governor Inslee:

I am writing to inform you that I have decided to retire as the Chairman of the Energy Facility Site Evaluation Council (EFSEC). My plan is to continue working in the office through the end of September. This decision was made after a lot of discussion with my wife, and with a lot of thought. My wife has already retired, I am eligible for full retirement, and the mountains are calling.

I want to thank you for appointing me to this position. I began this job on November 1, 2013, and believe that the Council and staff have accomplished a great deal during this time period. I have included an attachment that lists some of these achievements. Although many of them pertain to the regulatory side of EFSEC, some of them are improvements that will make the siting process easier and more efficient.

My reason for deciding to retire is I am frustrated with some members of the Attorney General's Office who overstep their role on an ongoing basis, which has raised my stress level to the point that my health has begun to suffer. Some input from the AG's office during the siting process is certainly welcome because it helps EFSEC to make a stronger recommendation to you regarding a proposed facility. However, the Council and staff are ultimately responsible for developing this recommendation and for deciding the processes used to get there. For example, within the past few months, our AG insisted

(1b) RCW 5.60.060

As the Council Chair, I had clearly made my position against this known. This is just one small example of an AG not recognizing that they are supposed to act on behalf of the client agency instead of furthering their own agenda. As a result, a number of Council members were confused and frustrated that we were revisiting decisions that were previously resolved.

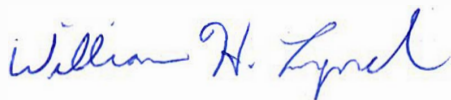
(1b) RCW 5.60.060

I believe that you will receive a thorough and well-balanced recommendation from EFSEC with respect to the proposed oil terminal in Vancouver. We have all worked diligently to provide this in a timely manner, and would have hoped that this could have been provided earlier. My most important recommendation to you for speeding-up the EFSEC process is to no longer require that permits be prepared prior to the siting decision being made. When EFSEC contracts with other agencies for staff

support, the staff who are working on the EIS are frequently the same staff who are working on the permits. I am unaware of any other siting process that requires permits to be developed before the siting decision is made. If you or a future Governor ultimately decides not to approve a proposed project, all the time and money spent in the development of the accompanying permits is wasted. Resources are better used at the front-end of the process in the development and finalization of the EIS. The law could be changed so that if the Governor approves a project, the accompanying permits could still be developed as a package, submitted to the Governor for approval, and then be subject to appeal on an expedited basis. This keeps the process moving, saves money, and still allows for a consolidated appeal of the permits. I do not believe that the process is broken, but it could benefit from a few tweaks.

Thank you for the opportunity to serve the State of Washington as the EFSEC Chair. I will work to make the transition to my successor as smooth as possible.

Cordially,

A handwritten signature in blue ink that reads "William H. Lynch". The signature is written in a cursive style.

Bill Lynch, EFSEC Chair

cc: Kelly Wicker
Keith Phillips
Dave Danner

attachment



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

August 16, 2017

The Energy Facility Site Evaluation Council (EFSEC) provides a one-stop siting process for major energy facilities within Washington State. If a facility is sited through the EFSEC process, EFSEC retains oversight of the operation of the facility. There are no outstanding compliance issues with any of EFSEC's facilities. EFSEC's accomplishments since November 1, 2014 are summarized below.

RECENT ACCOMPLISHMENTS/INITIATIVES AT EFSEC

Delegation from EPA

- 1) EPA approved a State Implementation Plan (SIP) for EFSEC ON May 30, 2017, which went into effect on June 29, 2017. Prior to this approval, EPA and EFSEC had to issue certain air quality (PSD) permits jointly. The lack of available permit writers to assist EFSEC had been problematic in getting necessary permits obtained. Because EPA approved the SIP, significant time and costs will be saved in the processing of the PSD permits because EPA no longer jointly approves these permits.

An EFSEC facility, which has been waiting 8+ years to have a revised PSD permit issued, will likely have a revised PSD permit available for EFSEC review in October 2017. After issuance of the PSD, then EFSEC may issue a Title V air permit for the facility.

- 2) A new memorandum of agreement (MOA) between EPA and EFSEC for water quality permitting has been prepared and submitted to EPA for approval. The last MOA was issued in 1979. EFSEC and Ecology have also prepared and signed a new MOA between themselves to update their responsibilities.

Rules and Policies

- 3) In October 2015, EFSEC adopted rules clarifying its authority to issue coverage under Ecology general permits. These rules will save applicants time and money because an individual permit does not have to be prepared for a facility. As part of this same rulemaking, rules were adopted specifying what information applicants needed to file with their applications to obtain certain permit coverage. Tesoro-Savage was able to use this general permit coverage for construction stormwater as part of its application for the Vancouver facility.
- 4) In August 2015, EFSEC adopted its first enforcement policy for determining the appropriate amount of a penalty in the case of noncompliance by an energy facility under EFSEC's jurisdiction. The policy includes a gravity criteria scoring worksheet and gravity criteria notes.
- 5) Rulemaking has been initiated by the Council to update its rules pertaining to water quality compliance schedules. The rulemaking gives EFSEC more flexibility and makes its oversight process more efficient because a minor change will no longer require re-opening of the entire permit. Ecology has had this same flexibility for many years.

- 6) A policy was adopted on March 25, 2016 to clarify what types of plans associated with a new facility require full Council review and approval, and those that may be approved solely by the EFSEC Manager.

Legislation

- 7) During the 2015 legislative session, the Legislature enacted an EFSEC request bill (SB 5310) to update EFSEC's enforcement authority in order to be consistent with Ecology's and local air pollution control authorities' compliance statutes. Maximum penalty amounts were raised from \$5000 to \$10,000 per day and statutory references are corrected. This bill helped ensure that EFSEC would retain its delegated authority from EPA to issue permits, and also made it possible for EPA to approve EFSEC's SIP request.
- 8) The UTC submitted request legislation (SB 6196) in the 2016 session pertaining to EFSEC deposits and billing to OFM. This bill was enacted.
- 9) Pursuant to a proviso in the 2015-16 operating budget, EFSEC hired a consultant to study the siting of small modular nuclear reactors in Washington. The consultant provided a draft report to EFSEC on December 1, 2015, and a final report to the Legislature during the first week of the 2016 legislative session.

Permits for existing facilities

- 10) EFSEC issued a National Pollutant Discharge Elimination System (NPDES, water quality) Permit to Energy Northwest for the operation of the Columbia Generating Station. This was a multi-year effort involving multiple state and federal agencies, as well as other stakeholders. A discharge to the ground is eliminated as part of this permit. A fish entrainment study is required to address concerns about potential impacts to fish from the cooling tower water intake structure. On October 16, 2015, a Thurston County Superior Court judge upheld the permit against a legal challenge. A modification to the NPDES permit was issued to address an unrelated court decision regarding Ecology's authority.
- 11) EFSEC issued a Synthetic Minor Air Permit to the Columbia Generating Facility. This permit allows Energy Northwest to add a new diesel generator to enhance nuclear power safety by providing for more flexible responses in the event of an emergency. Methods of making calculations for determining compliance were also modified to make information more current and accurate, and to conform to new federal requirements.
- 12) EFSEC issued a license to the Columbia Generating Facility to allow storm water and wastewater to be diverted into newly constructed and lined evaporation ponds. The Department of Health and EFSEC cooperated on license terms.
- 13) EFSEC issued a fugitive rad emissions license to close a stormwater infiltration ditch at the Columbia Generating Facility.
- 14) EFSEC issued a Title V air permit for the Chehalis Generation Facility in December 2016.

Administration

- 15) EFSEC approved a mitigation plan for greenhouse gases for the Chehalis Generation Facility after a multiple year delay by the facility. The plan has reduced greenhouse gases from the facility while making the plant more efficient at the same time.
- 16) The Grays Harbor Energy Center agreed to replace its cooling tower, which had been built from arsenic-treated timbers. The amount of arsenic discharged into the River appears to be at the same levels as the background receiving water. Grays Harbor Energy is collecting water samples to allow for a characterization of its discharge, which will result in the facility completing an engineering report on the facility – which had never been done. A new NPDES permit will then issue following the engineering report.
- 17) EFSEC created a task order with Ecology for the Chehalis Generation Facility to enable timely and full evaluations of any permit exceedances by the facility. These task orders are now in place for all EFSEC-sited facilities.
- 18) EFSEC initiated talks with the Grays Harbor Energy Center to address noise complaints raised by neighbors. As a result, the facility installed continuous noise monitoring equipment, which will be activated during the next time the facility is off-line. This action resolves an ongoing multi-year dispute with neighbors.
- 19) The State Fire Marshall and Kittitas County Fire Marshall now do annual inspections of all EFSEC facilities.
- 20) EFSEC hired a consultant to review the adequacy of financial assurances provided by its existing facilities and to recommend any needed changes in how these assurances are determined. A white paper will be prepared in the near future on this subject.
- 21) EFSEC reviewed the adequacy of a revegetation plan associated with a mitigation site as part of an interagency oversight team.
- 22) EFSEC remains informed of discussions between the Wild Horse wind facility and federal/state officials following the deaths of golden eagles at the facility.
- 23) All prior EFSEC orders are now available on the agency website.
- 24) EFSEC established an electronic filing system for adjudications associated with the siting process. This system will function like filing systems used by quasi-judicial agencies.
- 25) EFSEC is developing a template for processing site certification agreements for future proposals.

Jurisdiction Reviews

- 26) EFSEC issued two declaratory orders regarding potential jurisdiction of proposed facilities, and reviewed whether it had jurisdiction over several other potential facilities. Amendments to current statute have been identified to simplify this review process.

Current Application Being Processed

27) Vancouver Energy submitted a site certification application for a proposed oil by rail transfer facility in Vancouver. This proposed facility is designed to accept an average of 360,000 barrels of crude oil per day, which would be the largest such facility in the United States. After holding an initial public information hearing, the following steps have occurred:

- A. Land use consistency hearing - This hearing is held to determine whether a proposed project meets current local planning and zoning requirements. A well-attended hearing was held in Vancouver on May 28, 2014. The land use consistency decision has been issued, which also clarified the Council's scope of review in these proceedings.
- B. SEPA scoping hearings - These hearings are held to receive public input on the extensiveness of the environmental impact statement (EIS). The Council held hearings in Vancouver and Spokane Valley. A total of 30,947 scoping comments were received from the general public, and an additional 22 scoping comments were received from agencies.
- C. SEPA draft environmental impact statement (DEIS) hearings - The DEIS was published on November 24, 2015. Public hearings were held in Vancouver and Spokane Valley, and **more than 260,000 public comments were received**. This includes a 900-page comment letter from the Applicant. More than 3000 pages of substantive comments were received. The final EIS is being finalized.
- D. Adjudication - A five-week trial was conducted by an administrative law judge before the Council and the record closed on September 6, 2016. Findings of fact and conclusions of law are being written based upon the testimony and evidence at the adjudication.
- E. Permits - Three separate permits are being developed for the proposed facility. A public hearing was held in Vancouver on the construction stormwater permit in November 2016. A hearing on the air quality permit has also been held. A hearing on the industrial stormwater permit is scheduled for August 22, 2017.

EXHIBIT C



Published on *Washington State* (<http://www.atg.wa.gov>)

[Home](#) > AG opposes Vancouver oil terminal project

AG opposes Vancouver oil terminal project

FOR IMMEDIATE RELEASE:

Jul 29 2016

OLYMPIA — In today’s closing arguments for the environmental review of a proposed crude oil terminal in Vancouver, Attorney General Bob Ferguson’s Counsel for the Environment will announce its opposition to the project.

The Tesoro Savage Vancouver Energy Distribution Terminal is currently under review by the state’s Energy Facility Site Evaluation Council (EFSEC), which is tasked under state law with recommending to the Governor either that he approve or reject the project.

“Protecting the environment and public safety are top priorities of my office, and we considered the evidence presented with the care those priorities demand,” Ferguson said. “The bottom line is that the potential benefits of this project are dramatically outweighed by the potential risks and costs of a spill.”

The Attorney General’s Counsel for the Environment had previously [filed comments](#) and commissioned expert review of certain aspects of the project, which raised serious questions about derailment data, emergency response plans and the potential impacts to the critically important natural resources of the Columbia River, including its fisheries and other habitats.

After weeks of testimony before EFSEC from a variety of parties, Counsel for the Environment concluded that Tesoro Savage has not shown that the need for the project outweighs the potential environmental harms.

If the Tesoro Savage facility is completed, according to testimony in the hearings, vessels loaded with crude oil would make 365 trips a year along the Columbia River, and an additional 3,000 oil trains would run through the state annually to service the project.

Even if EFSEC concludes the risk of a worst-case oil spill or public safety disaster from those trains and vessels is statistically low, the potential environmental consequences and impacts to the public of such a spill are massive.

Tesoro Savage cannot guarantee that a worst-case spill or public safety disaster would not occur if this project is built. Testimony at the EFSEC review showed that a spill would negatively impact Washington's environment, and the communities that depend on it, for many years.

Given the weight of the evidence presented, the project is not in the public interest. The Attorney General's Counsel for the Environment will therefore urge EFSEC to recommend the project be rejected.

Counsel for the Environment

Assistant Attorney General Matthew Kernutt was appointed by Attorney General Ferguson as Counsel for the Environment, representing the public and its interest in protecting the environment on proposed developments of large, non-hydro energy facilities in Washington.

Under state law, the Attorney General appoints an Assistant Attorney General as Counsel for the Environment (CFE) when EFSEC receives a site application for review. That attorney operates independently of EFSEC, other state agencies and parties involved in the site application.

The CFE plays an important role in the overall project review. In addition to soliciting public input, providing general information concerning the EFSEC process, helping citizens inform the EFSEC of their concerns, the CFE participates in the adjudication held before the EFSEC.

More information is available [here](#).

-30-

The Office of the Attorney General is the chief legal office for the state of Washington with attorneys and staff in 27 divisions across the state providing legal services to roughly 200 state agencies, boards and commissions. Visit www.atg.wa.gov to learn more.

Contact:

Peter Lavalley, Communications Director, (360) 586-0725; PeterL@atg.wa.gov