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6 **BEFORE THE STATE OF WASHINGTON ENERGY**  
7 **FACILITY SITE EVALUATION COUNCIL**

8 In the Matter of: Application No. 2013-01

CASE NO. 15-001

9 TESORO SAVAGE, LLC

CITY OF VANCOUVER'S MOTION FOR  
ORDER RULING THAT EFSEC LACKS  
10 AUTHORITY TO ISSUE PRETREAT-  
MENT DISCHARGE PERMIT

11 VANCOUVER ENERGY DISTRIBUTION  
TERMINAL

12 **I. MOTION**

13 The City of Vancouver ("Vancouver") moves the Energy Facility Site Evaluation  
14 Council ("EFSEC") for the entry of an order determining that EFSEC does not have the  
15 jurisdiction or authority to issue a pretreatment wastewater discharge permit to the applicant  
16 Tesoro Savage, LLC ("Applicant") under the National Pretreatment Program, which is a  
17 component of the National Pollutant Discharge Elimination System ("NPDES") established by  
18 the Clean Water Act, 33 U.S.C. § 1251 *et seq.* ("CWA"). The Applicant apparently agrees that it  
19 must receive a permit from Vancouver, because its application to EFSEC includes a copy of an  
20 application to Vancouver for a permit to discharge its wastewater to Vancouver's publicly owned  
21 treatment works ("POTW"), i.e., sewer plant. (Appl. No. 2013-01 § 5.2 (Aug. 2013).)<sup>1</sup>

22  
23 <sup>1</sup> WAC 463-60-537(2) requires an application to EFSEC for site certification to include, "[f]or any proposed  
24 discharge to publicly owned treatment works (POTW) and/or groundwater of the state of Washington, a state waste  
discharge application." This rule does not specify the permitting authority for the waste discharge application, so

1 However, this motion is brought to avoid any confusion or lack of clarity regarding EFSEC's  
2 jurisdiction or authority to issue such a permit. This motion is timely, and it falls squarely within  
3 the following jurisdictional issue subject to this briefing deadline: "Does EFSEC have  
4 preemptive authority to issue all state and local permits and approvals necessary for construction  
5 and operation of the facility, and, if so, how will EFSEC implement such authority?" (Order  
6 Clarifying EFSEC's Process ¶ E at 2 (Feb. 3, 2016).)

## 7 II. ISSUE

8 Does EFSEC have the authority to issue a permit for the discharge of industrial  
9 wastewater from the proposed facility to Vancouver's POTW?<sup>2</sup>

## 10 III. SHORT ANSWER

11 No, EFSEC does not have wastewater discharge permitting authority under state law and  
12 has not received the necessary delegation of permitting authority from the United States  
13 Environmental Protection Agency ("EPA"), which administers the CWA. Furthermore, even if  
14 EFSEC did have this authority, it could not implement the authority because it does not have an  
15 approved pretreatment program.

## 16 IV. FACTS

17 The following overview of the National Pretreatment Program by EPA highlights why  
18 the program is, and must be, locally implemented and enforced by each POTW, in cooperation  
19 with state and federal authorities.

20 The goals of the CWA are to eliminate the introduction of pollutants into the  
21 nation's navigable waters and to achieve fishable and swimmable water quality  
22 levels. The CWA's National Pollutant Discharge Elimination System (NPDES)

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22 the Applicant's submission of a proposed application to Vancouver for a pretreatment permit indicates that the  
23 Applicant believes Vancouver to be the proper permitting authority, and Vancouver agrees.

24 <sup>2</sup> This motion does not address a related but distinct issue regarding EFSEC's consideration of the consequences  
of the wastewater that the proposed facility would generate or mitigation for those consequences. This motion is  
directed solely at EFSEC's authority to issue a pretreatment permit to the Applicant authorizing discharges of  
wastewater to Vancouver's POTW.

1 Permit Program represents one of the key components established to accomplish  
2 the goals of the CWA. The NPDES Permit Program generally requires that point  
3 source discharges of pollutants to waters of the United States, i.e., *direct*  
4 *dischargers*, obtain an NPDES permit. ....

5 In addition to addressing these direct discharges, the CWA also  
6 established a regulatory program to address *indirect discharges* from industries to  
7 publicly owned treatment works (POTWs) through the National Pretreatment  
8 Program, a component of the NPDES Permit Program. The National  
9 Pretreatment Program requires industrial and commercial dischargers, called  
10 *industrial users* (IUs), to obtain permits or other control mechanisms to discharge  
11 wastewater to the POTW. Such a permit may specify the effluent quality that  
12 necessitates that an IU pretreat or otherwise control pollutants in its wastewater  
13 before discharging it to a POTW.

14 Certain industrial discharge practices can interfere with the operation of  
15 POTWs, leading to the discharge of untreated or inadequately treated wastewater  
16 into rivers, lakes, and other waters of the United States. A discharge that causes  
17 *interference* inhibits or disrupts the POTW, its treatment processes or operations,  
18 or its sludge processes, use, or disposal and therefore causes a violation of any  
19 requirement of the POTW's NPDES permit. Some pollutants are not amenable to  
20 biological wastewater treatment at POTWs and can pass through the treatment  
21 plant untreated. This *pass through* of pollutants affects the receiving water and  
22 might cause fish kills or other deleterious effects. ....

23 The General Pretreatment Regulations of the National Pretreatment  
24 Program require all large POTWs<sup>3</sup> (those designed to treat flows of more than  
5 million gallons per day) and smaller POTWs (that accept wastewater from IUs  
that could affect the treatment plant or its discharges) to establish local  
pretreatment programs. These local programs must enforce all national  
pretreatment standards and requirements in addition to any more stringent local  
requirements necessary to protect site-specific conditions at the POTW.

16 EPA, EPA-833-B-11-001, Introduction to the National Pretreatment Program iii (June 2011)  
17 (footnote omitted) (emphasis in original), *available at* [https://www3.epa.gov/npdes/pubs/pretreatment\\_program\\_intro\\_2011.pdf](https://www3.epa.gov/npdes/pubs/pretreatment_program_intro_2011.pdf).

19 The National Pretreatment Program, which is a nationwide federal program, is  
20 nonetheless designed to be implemented at the local level. This implementation is accomplished  
21 through a two-step process: (i) EPA expressly delegates pretreatment permitting authority to the  
22 state pursuant to a memorandum of agreement ("MOA"), *see* 40 C.F.R. § 123.24; and (ii) the  
23 state reviews and approves a municipality's or other POTW's pretreatment program to ensure

24 <sup>3</sup> Vancouver operates a large POTW.

1 compliance with the CWA and all applicable state and local water quality standards, *see* ch. 173-  
2 208 WAC.<sup>4</sup> The current MOA between EPA and the Washington State Department of Ecology  
3 (“Ecology”) is attached to this motion as Attachment 1 (“Ecology MOA”).<sup>5</sup> (Affidavit of Karen  
4 L. Reed (“Reed Aff.”) ¶¶ 5-6, at 1-2.) Ecology’s order approving Vancouver’s pretreatment  
5 program is attached to this motion as Attachment 2 (“NPP Order”). (Affidavit of Frank A. Dick  
6 (“Dick Aff.”) ¶ 5, at 2.)

7 The Applicant proposes a maximum average monthly wastewater discharge flow (i.e.,  
8 daily flows averaged over a month) of 36,000 gallons of industrial wastewater per day into  
9 Vancouver’s POTW.<sup>6</sup> (Appl. No. 2013-01 § 5.2 at 4.) This discharge rate exceeds the threshold  
10 of an average of 25,000 gallons per day for classification as a “Significant Industrial User” based  
11 on volume. Vancouver Municipal Code (“VMC”) 14.10.040(WW)(2)(a).<sup>7</sup> The pollutants that  
12 will be contained in the wastewater are detailed in the application and include calcium, chloride,  
13 sulfate and various toxic metals. (Appl. No. 2013-01 § 5.2 at 9-10.) The Applicant identified  
14 itself as a “Categorical Industrial User,” (*id.* at 19), which means that it is subject to Categorical  
15 Pretreatment Standards under 40 C.F.R. § 403.6 and 40 C.F.R. Chapter I, Subchapter N.<sup>8</sup> All  
16 Categorical Industrial Users are classified as Significant Industrial Users. VMC 14.10.  
17 040(WW)(1). Consequently, the Applicant qualifies as a Significant Industrial User based both  
18 on discharge volume and source category. All Significant Industrial Users must apply for and  
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21 <sup>4</sup> See also Wash. State Dept. of Ecology, Guidance Manual for Developing Local Discharge Limits (June 2011),  
available at <https://fortress.wa.gov/ecy/publications/publications/1110056.pdf> (describing the process for a  
Washington POTW to develop local pretreatment standards).

22 <sup>5</sup> The state had entered into an earlier MOA with EPA dated November 9, 1973, which was superseded.  
(Ecology MOA, Attach. 1 § 1, at 1.)

23 <sup>6</sup> In addition, the facility would use an average of 60,900 gallons per day and a maximum of 87,200 gallons per  
day of potable water. (Appl. No. 2013-01 § 5.2 at 7.)

24 <sup>7</sup> The VMC is available online at <http://www.cityofvancouver.us/vmc>.

<sup>8</sup> See, e.g., 40 C.F.R. Part 422 (Transportation Equipment Cleaning Point Source Category); Transcript of EFSEC  
Monthly Council Meeting for Aug. 18, 2015, at 15:16-22:4 (test. of Sonia Bumpus re tank car washing).

1 obtain "individual permits or equivalent individual control mechanisms." 40 C.F.R.  
2 § 403.8(f)(1)(iii).

3 The process for obtaining an individual wastewater pretreatment discharge permit from  
4 Vancouver is set forth at VMC 14.10.160-.240. In general, the pretreatment process is focused  
5 on the pollutants in the wastewater at the point it leaves the regulated facility. An individual  
6 permit typically will include effluent concentration limits for specific pollutants, such as the  
7 above-listed pollutants contained in the Applicant's wastewater, and general characterization  
8 requirements for the effluent, such as remaining within a specified pH range and ensuring that  
9 the effluent will not cause interference or pass through. (Dick Aff. ¶ 8, at 2.) Additional  
10 requirements in individual permits include: adherence to standards for effluent sampling,  
11 periodic reporting, recordkeeping and records retention; use of specified EPA-approved  
12 laboratory testing methods; calibration and maintenance of testing equipment; and  
13 implementation of industry-specific best management practices, including maintenance of  
14 pretreatment equipment. (*Id.* ¶ 9, at 2-3.) The permit will not specify treatment technologies or  
15 industrial process modifications to meet the required standards; instead, the applicant will be  
16 requested to propose a pretreatment plan to bring the effluent into compliance.<sup>9</sup> (*Id.* ¶ 10, at 3.)

17 Calculation of effluent limitations for an individual pretreatment permit is based on  
18 consideration of: (i) National Categorical Pretreatment Standards, 40 C.F.R. pts. 405-471;  
19 VMC 14.10.060; (ii) Washington State Pretreatment Standards, ch. 173-216 WAC;  
20 VMC 14.10.070; and (iii) local limits "based upon the POTW's site-specific flow and loading  
21 capacities, receiving water considerations, and reasonable treatment expectations for non-  
22 domestic wastewater," VMC 14.10.080; *see* 40 C.F.R. § 403.5(c) (describing circumstances

23 <sup>9</sup> This "end of pipe" focus is contrasted with the Clean Air Act, 42 U.S.C. § 7401 *et seq.*, which imposes specific  
24 include consideration of operational processes such as "plant configurations," *Alaska Dep't of Envtl. Conservation v. EPA*, 540 U.S. 461, 488, 124 S. Ct. 983, 1002, 157 L. Ed. 2d 967 (2004).

1 when local POTW must develop specific limits). Consequently, this calculation requires  
2 intimate knowledge of the local POTW's operations and operational constraints. (Dick Aff.  
3 ¶ 11, at 3.) Thus, as a practical matter, to issue the Applicant a pretreatment discharge permit,  
4 EFSEC would first have to develop not only an approved pretreatment program but also this in-  
5 depth knowledge of Vancouver's POTW operations, including among other things the processes  
6 involved in ensuring compliance with Vancouver's NPDES discharge permit conditions for its  
7 discharge of treated effluent to the waters of the state.

8 Vancouver has two wastewater treatment plants. The Applicant's discharges would go to  
9 the Westside Water Reclamation Facility located at 2323 West Mill Plain Blvd. (*Id.* ¶ 12, at 3.)  
10 The current NPDES permit for this facility ("Westside NPDES Permit") is attached to this  
11 motion as Attachment 3. (*Id.* ¶ 6, at 2.) The Westside NPDES Permit requires analysis of  
12 wastewater and sludge for specified Priority Pollutants, listed at 40 C.F.R. pt. 423, app. A, and  
13 Toxic Pollutants, listed at 40 C.F.R. § 401.15. (Westside NPDES Permit, Attach. 3 §§ S1A,  
14 S6B.) The permit also requires Vancouver to implement an approved pretreatment program for  
15 nondomestic wastewater discharges to the treatment plants. (*Id.* § S6, at 14-20; Dick Aff. ¶ 13-  
16 14, at 3.) If Vancouver's discharges to the Columbia River exceeded the prescribed effluent  
17 limits for the specified pollutants or Vancouver failed to continue operating its approved  
18 pretreatment program, then Ecology or EPA could bring an enforcement action against  
19 Vancouver. (Ecology MOA, Attach. 1 § IV.B, at 11; Westside NPDES Permit, Attach. 3 § G13,  
20 at 33; Dick Aff. ¶ 15-16, at 3.) Vancouver could be fined up to \$10,000 per day per violation,  
21 and a willful violation could subject the person responsible for the violation to criminal  
22 prosecution. (Westside NPDES Permit, Attach. 3 § G13, at 33.)  
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## V. ARGUMENT

### A. Introduction

EFSEC's enabling legislation does not give it authority to issue pretreatment discharge permits. The statutes do give EFSEC authority to preempt other state laws related to the location, construction and operational conditions of certification for energy facilities, such as the Applicant's proposed facility, that are subject to its jurisdiction, RCW 80.50.110-.120. This enabling legislation does not purport to preempt any federal laws. Since pretreatment discharge permits are issued pursuant to federal law and under delegated federal authority, EFSEC's preemptive authority does not include issuance of these permits. EFSEC undoubtedly may evaluate the adequacy of this permitting regime to address project impacts. But, lacking the necessary delegated authority, EFSEC cannot issue the pretreatment discharge permit.

Thirty-seven years ago, EFSEC entered into an MOA with EPA ("EFSEC MOA"), which is attached to this motion as Attachment 4, (Reed Aff. ¶¶ 5, 7, at 1, 2), and which delegated authority to EFSEC to issue NPDES permits for discharges to waters of the state. However, pretreatment permits do not authorize discharges to the waters of the state. Instead, they authorize indirect discharges to POTWs, and these indirect discharges are expressly excluded from the definition of waters of the state, *see* WAC 463-76-010(34). As a result, these discharges are not within the scope of the EFSEC MOA. The EFSEC MOA does not even mention the National Pretreatment Program, unlike the Ecology MOA, which addresses the program in detail. Consequently, EFSEC does not have federally delegated authority to issue pretreatment permits or conduct pretreatment monitoring and enforcement. Finally, even if EFSEC does have authority to issue pretreatment permits, many considerations militate against the exercise of this authority, including CWA liability concerns and Vancouver's comparatively long history and expertise with pretreatment permitting.

1 **B. EFSEC Lacks State Statutory Authority to Issue Pretreatment Permits**

2 EFSEC does not have express statutory authority to issue any type of wastewater  
3 discharge permit.<sup>10</sup> Consequently, if the Applicant were to change its position regarding  
4 Vancouver's authority, the Applicant would bear the burden of proving that EFSEC has authority  
5 to issue such a permit under state law through preemption of other statutory programs.<sup>11</sup> The  
6 statutes under which EFSEC is afforded preemption authority provide:

7 **Chapter governs and supersedes other law or regulations—Preemption of  
regulation and certification by state.**

8 (1) If any provision of this chapter [RCW 80.50] is in conflict with any  
9 other provision, limitation, or restriction which is now in effect under any other  
10 *law of this state*, or any rule or regulation promulgated thereunder, this chapter  
11 shall govern and control and such other law or rule or regulation promulgated  
12 thereunder shall be deemed superseded for the purposes of this chapter.

(2) The state hereby preempts the regulation and certification of the  
location, construction, and operational conditions of certification of the energy  
facilities included under RCW 80.50.060 as now or hereafter amended.

13 RCW 80.50.110 (emphasis added).

14 **Effect of certification.**

(1) Subject to the conditions set forth therein *any certification shall bind  
the state and each of its departments, agencies, divisions, bureaus, commissions,  
boards, and political subdivisions*, whether a member of the council or not, as to  
the approval of the site and the construction and operation of the proposed energy  
16 facility.

(2) The certification shall authorize the person named therein to construct  
and operate the proposed energy facility subject only to the conditions set forth in  
such certification.

(3) The issuance of a certification shall be in lieu of any *permit, certificate  
or similar document required by any department, agency, division, bureau,  
commission, board, or political subdivision of this state*, whether a member of the  
council or not.

21 <sup>10</sup> In sharp contrast, EFSEC has express statutory authority “[t]o issue permits in compliance with applicable  
provisions of the federally approved state implementation plan adopted in accordance with the Federal Clean Air  
Act.” RCW 80.50.040(12). If EFSEC’s blanket preemption authority included federal permits, this statutory  
provision would be surplusage. *Citizens Alliance for Prop. Rights Legal Fund v. San Juan County*, 184 Wn.2d 428,  
440, 359 P.3d 753, 760 (2015) (en banc) (“[S]tatutes must be interpreted and construed so that all the language used  
is given effect, with no portion rendered meaningless or superfluous.” (quotation omitted)).

23 <sup>11</sup> If EFSEC does not have express statutory authority to issue a permit, the party applying for affirmative relief  
from EFSEC to issue the permit should bear the burden of proving, as part of its prima facie showing of entitlement  
24 to the permit, that EFSEC has the requisite implied legal authority, particularly when, as in this case, another  
governmental entity has been given express statutory authority to issue the permit.

1 RCW 80.50.120 (emphasis added).

2  
3 **i. EFSEC's Preemptive Authority Is Limited to State Laws and Does Not Include  
the National Pretreatment Program**

4 These statutes should be read together to determine at the outset whether there is any  
5 ambiguity regarding whether EFSEC's preemption authority extends to federal law and permits  
6 issued under federal law.

7 Our purpose when interpreting a statute is to "discern and implement the intent of  
8 the legislature." Where the meaning of statutory language is plain on its face, we  
9 must give effect to that plain meaning as an expression of legislative intent. In  
10 discerning the plain meaning of a provision, *we consider the entire statute in  
which the provision is found*, as well as related statutes or other provisions in the  
same act that disclose legislative intent. When a statute is ambiguous, we then  
resort to aids of construction, including legislative history.

11 *City of Spokane v. County of Spokane*, 158 Wn.2d 661, 673, 146 P.3d 893, 898-99 (2006)  
12 (en banc) (quoting *City of Olympia v. Drebeck*, 156 Wn.2d 289, 295, 126 P.3d 802, 804 (2006)  
13 (en banc) (internal quotation omitted)) (citations omitted) (emphasis added). "[I]f the statute's  
14 meaning is plain on its face, then the court must give effect to that plain meaning as an  
15 expression of legislative intent." *Advanced Silicon Materials, L.L.C. v. Grant County*,  
16 156 Wn.2d 84, 89, 124 P.3d 294, 296-97 (2005) (en banc) (quoting *Dep't of Ecology v.*  
17 *Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9-10, 43 P.3d 4, 9 (2002) (en banc)).

18 The plain language of RCW 80.50.110 and RCW 80.50.120 is unambiguously directed at  
19 state law. Federal law is not mentioned at all. However, state law, state agencies and permits  
20 issued pursuant to state law are mentioned multiple times. Thus, there is no reasonable  
21 construction of these provisions that would support an argument that they authorize EFSEC to  
22 preempt federal law. Furthermore, the legislature can be presumed to have been aware of the  
23 substantial legal barriers, including the Supremacy Clause, that EFSEC would face if it  
24 attempted to preempt federal law. *Cf. Snohomish County v. Anderson*, 123 Wn.2d 151, 156,

1 868 P.2d 116, 118 (1994) (en banc) (“[T]he Legislature is presumed to be familiar with judicial  
2 decisions of the [Washington State] Supreme Court construing existing statutes and the state  
3 constitution.”).

4 The CWA, under which the National Pretreatment Program arises, cannot be categorized  
5 as a “law of this state.” Vancouver issues individual pretreatment permits under delegated  
6 authority from Ecology, which itself has delegated authority from EPA. Thus Vancouver  
7 substitutes for EPA; EPA would have to issue the permit if these delegations did not exist.  
8 Moreover, Vancouver must comply with all federal standards and requirements.<sup>12</sup> Simply put,  
9 the National Pretreatment Program creates a partnership among EPA, the states and local POTW  
10 authorities to implement and enforce the CWA, a federal law:

11 A POTW pretreatment program must be based on the following legal  
12 authority and include the following procedures. These authorities and procedures  
shall at all times be fully and effectively exercised and implemented.

13 (1) Legal authority. The POTW shall operate pursuant to legal authority  
14 enforceable in Federal, State or local courts, which authorizes or enables the  
POTW to apply and to enforce the requirements of sections 307 (b) and (c), and  
402(b)(8) of the [CWA] and any regulations implementing those sections.

15 40 C.F.R. § 403.8(f).

16 **ii. The Scope of EFSEC’s Preemptive Authority under State Law Does Not Extend**  
17 **to Issuance of Pretreatment Permits**

18 EFSEC’s enabling legislation provides for the preemption of certain laws related to  
19 energy facility siting: “The state hereby preempts the regulation and certification of the *location,*  
20 *construction, and operational conditions of certification* of the energy facilities included under  
21 RCW 80.50.060 as now or hereafter amended.” RCW 80.50.110(2) (emphasis added). While  
22 EFSEC is charged with determining energy facility location, construction and operational

23 <sup>12</sup> This aspect of pretreatment discharge permitting also contrasts with the Clean Air Act, under which “Congress  
24 entrusted state permitting authorities with initial responsibility to make BACT determinations,” *Alaska Dep’t of*  
*Envil. Conservation*, 540 U.S. at 488, 124 S. Ct. at 1002, subject to a reasonableness review by EPA, *id.* at 495,  
124 S. Ct. at 1006.

1 conditions, this grant of authority does not allow EFSEC to assume powers EPA delegated to  
2 Ecology and Ecology delegated to Vancouver, and it certainly does not authorize EFSEC to issue  
3 every permit that the proposed facility may require.<sup>13</sup>

4 Revisions to EFSEC's legislation over the years demonstrate this point. RCW 80.  
5 50.110(2) was first enacted in 1970. Laws of 1970, 2nd Ex. Sess., ch. 45, § 11(2). As originally  
6 enacted this statute provided: "The state hereby preempts the regulation and certification of  
7 thermal power plant sites and thermal power plants ...." *Id.* Thus, EFSEC's jurisdictional  
8 authority was limited to thermal power plants and their sites, but it provided for broad  
9 preemption of other state "regulation" of these plants. In 1976, RCW 80.50.110(2) was amended  
10 to its current form, quoted above. Laws of 1975-76, 2nd Ex. Sess., ch. 108, § 37(2). This  
11 amendment expanded EFSEC's authority to include statutorily defined energy facilities, not  
12 merely thermal power plants, but also clarified that EFSEC's central role is not necessarily  
13 issuing every permit required, but to focus on the "regulation ... of the location, construction and  
14 operational conditions of certification." Thus, while EFSEC is required to assess the adequacy  
15 of various permitting programs to address project impacts, that assessment is distinct from  
16 actually issuing the required permits.

17 Had the legislature intended EFSEC to preempt all state regulations and to issue every  
18 required permit, perhaps it would have amended this subsection by simply substituting "energy  
19 facilities" for "thermal power plants." Instead, by also revising the scope of this subsection, the  
20 legislature evinced its intent to focus EFSEC's preemptive authority on the substantive impacts

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22 <sup>13</sup> Compare Op. Wash. Att'y Gen. 1980-5, 1980 WL 99839 (opining that nothing in chapter 80.50 RCW precludes  
23 the State Department of Labor and Industries from conducting inspections, pursuant to its statutory authorities, of an  
24 energy facility permitted by EFSEC) with Op. Wash. Att'y Gen. 1977-1, 1977 WL 25947 (opining that RCW 80.  
50.110 authorizes EFSEC to issue site certifications that contain provisions inconsistent with applicable county, city  
or regional zoning codes); see also WAC § 463-28-020 ("The authority of [EFSEC] is contained in RCW ...  
80.50.110(2)[,] which provides that the state preempts the regulation and certification of the location, construction,  
and operational conditions of certification of energy facilities.").

1 associated with siting a complex energy facility, but not necessarily serving as the entity  
2 responsible for issuing all permits. Regardless, resolution of this motion does not require a  
3 precise definition of the limits of EFSEC's preemptive authority. Rather, this motion only  
4 requests a finding that EFSEC does not have authority to issue a pretreatment permit to the  
5 Applicant for indirect discharges of wastewater to Vancouver's POTW because it lacks  
6 delegated pretreatment permitting authority.

7 Vancouver's permitting regime does not duplicate EFSEC's role. The National  
8 Pretreatment Program regulates effluent concentration limits rather than a facility's location,  
9 construction or operations. As explained above, the National Pretreatment Program is focused  
10 on the actual pollutants in ongoing industrial wastewater discharges to POTWs. In other words,  
11 the National Pretreatment Program does not regulate the industrial operations that generated the  
12 wastewater; it only regulates the concentrations of pollutants contained in the wastewater  
13 discharge. In that sense, the National Pretreatment Program is concerned with the wastewater  
14 discharges at the "end of the pipe," rather than the industrial operations of the facility at the other  
15 end of the pipe. Consequently, granting this order will not result in the types of problems that  
16 EFSEC and its one-stop-shop permitting were designed to address: Vancouver, through exercise  
17 of its delegated pretreatment permitting authority, can only regulate the characteristics of the  
18 wastewater flowing from the Applicant's facility to Vancouver's POTW, and as explained in this  
19 motion EFSEC lacks authority to regulate that wastewater, so there is no risk to the Applicant of  
20 being subject to multiple conflicting regulatory requirements.

### 21 **C. EFSEC Does Not Have Delegated Authority to Issue a Pretreatment Permit**

22 Other programs under the NPDES are also delegated pursuant to MOAs, and EPA enters  
23 into MOAs with differing state agencies, depending on their jurisdictional authority under state  
24 law to enforce the CWA. Some states have received delegated authority of less than all of the

1 NPDES programs, and some states have no delegated CWA authority at all. Thus the specific  
2 language of each MOA must be scrutinized to identify the NPDES programs covered under the  
3 delegation. An analysis of the EFSEC MOA demonstrates that EFSEC does not have federally  
4 delegated authority to issue pretreatment permits or conduct pretreatment monitoring and  
5 enforcement. EFSEC's lack of authority to issue pretreatment permits is readily apparent when  
6 the Ecology MOA, which expressly delegates Ecology authority to issue pretreatment permits  
7 under the National Pretreatment Program, is compared with the EFSEC MOA, which only  
8 delegates authority for other (non-National Pretreatment Program) NPDES programs.

9 EPA issued the National Pretreatment Program regulations establishing the delegation  
10 process for that program in mid-1978. 43 Fed. Reg. 27,736 (June 26, 1978). Approximately one  
11 year later, on August 15, 1979, EFSEC entered into the EFSEC MOA. The 37-year-old EFSEC  
12 MOA describes the parties' "general understanding" as follows: "Adequate implementation of  
13 the objectives of chapter 80.50 RCW, chapter 90.48 RCW and the Federal Clean Water Act  
14 require EFSEC to issue and to revise *waste discharge permits for discharges to the public waters*  
15 *of the State of Washington* and to conduct a firm and vigorous enforcement program." (EFSEC  
16 MOA, Attach. 4 § I, at 2 (emphasis added).) The EFSEC MOA's scope was reiterated in the  
17 introduction to the statement of policies: "It shall be the goal of EFSEC to insure that NPDES  
18 permits are processed for all applicants for site certification of proposed energy facilities *whose*  
19 *projects include plans for waste discharge to State waters.*" (*Id.* § II at 2 (emphasis added).)  
20 Underscoring that the EFSEC MOA was not a delegation of all NPDES authority, it contained  
21 the following reservation provision: "Ecology ... shall have jurisdiction to issue, modify, or  
22 revoke NPDES permits for any other discharges in the State of Washington not specifically  
23 falling within the above definitions." (*Id.* § III.E at 5.) The EFSEC MOA does not mention the  
24 National Pretreatment Program.

1 The Applicant's proposed discharge to Vancouver's POTW does not come within  
2 EFSEC's authority under the EFSEC MOA. Pretreatment permits do not authorize discharges to  
3 *the waters of the state*. Rather, they authorize indirect discharges to a POTW, which is not a  
4 water of the state. "Waters of the state" are defined to be "surface waters and watercourses  
5 within the jurisdiction of the state of Washington." RCW 90.48.020. WAC 463-76-010(34)  
6 defines "waters of the state" as "all waters defined as 'waters of the United States' in 40 C.F.R.  
7 122.2 that are within the boundaries of the state of Washington." 40 C.F.R. § 122.2, in turn,  
8 specifically provides that "waste treatment systems" designed to meet the requirements of the  
9 CWA "are not waters of the United States." Thus, the Applicant's proposed discharge is not  
10 within the scope of the EFSEC MOA.

11 The Ecology MOA, dated January 9, 1990, differs significantly from the EFSEC MOA.  
12 The Ecology MOA recognizes that Ecology has comprehensive authority to implement and  
13 manage all of the state's NPDES programs: "Ecology has primary responsibility for  
14 implementing the NPDES program for the State of Washington. .... Ecology has the primary  
15 responsibility to establish State NPDES program priorities which are consistent with national  
16 NPDES goals and objectives." (Ecology MOA, Attach. 1 § I at 1.) In addition, Section V of the  
17 Ecology MOA contains nearly three pages of text expressly addressing the pretreatment  
18 permitting program for the state. (*Id.* § V at 11-14.) Ecology is given primary authority over all  
19 aspects of the state's pretreatment permitting program including, for example, "reviewing and  
20 approving POTW pretreatment programs" and exercising "local program oversight." (*Id.* at 11.)

21 On September 30, 1987, Ecology issued the NPP Order approving Vancouver's  
22 pretreatment program and delegating to Vancouver "authority to administer a permit program for  
23 the discharge of industrial and commercial waste into its sewerage system" (NPP Order,  
24 Attach. 2 at 2); *see* ch. 173-208 WAC (Ecology regulations governing delegation of permitting

1 authority to “any city, town, or municipal corporation operating a sewerage system”). The NPP  
2 Order also approved Vancouver’s pretreatment ordinance and required Vancouver to enforce its  
3 pretreatment standards against industrial and commercial users. (NPP Order, Attach. 2 at 3  
4 (“Vancouver shall require industrial and commercial users of its sewer system to provide  
5 pretreatment in accordance with the City of Vancouver Ordinance No. 14.10 and federal  
6 pretreatment regulations, or applicable state pretreatment regulations if the latter are more  
7 stringent.”); VMC 14.10.160(A) (“No User categorized by [Vancouver] as a Significant  
8 Industrial User shall discharge wastewater into the POTW without first obtaining an individual  
9 wastewater discharge permit from [Vancouver].”).) In addition to agreeing to adhere to all  
10 National Pretreatment Program requirements, Vancouver agreed to “maintain an adequate budget  
11 to assure sufficient personnel and funding to satisfactorily administer the [pretreatment] permit  
12 program.” (NPP Order, Attach. 2 at 2.)

13 In contrast, EFSEC has no rules governing delegation of permitting authority to POTWs,  
14 and it has no oversight or reporting procedures for POTWs with delegated authority. The lack of  
15 these rules, oversight and reporting is understandable, because EFSEC does not operate a  
16 pretreatment program under state or federal law. EFSEC has no express or implied delegated  
17 authority from EPA to establish and manage a pretreatment discharge permitting system.  
18 Additionally, EFSEC has no agreement with Vancouver analogous to the Ecology-issued NPP  
19 Order that would require Vancouver to accommodate acceptance of wastes from an energy  
20 facility to which EFSEC issued a pretreatment permit. Under these circumstances, EFSEC lacks  
21 legal authority to issue any type of permit authorizing the Applicant to discharge nondomestic  
22 wastewater to Vancouver’s POTW, and it is in the public interest for EFSEC to refuse any  
23 request from the Applicant for such a permit.

1 **D. As a Practical Matter, EFSEC Does Not Have the Resources or Infrastructure**  
2 **Necessary to Issue Pretreatment Permits and Should Refrain from Issuing Them**

3 Assuming for the sake of argument only that EFSEC has the requisite authority to issue  
4 pretreatment permits, it nonetheless should refrain from issuing them and allow Vancouver to  
5 continue administering its pretreatment permit program under Ecology's oversight, because it is  
6 impracticable for EFSEC to implement and manage its own pretreatment permitting program.  
7 Each POTW understands best how to regulate its Significant Industrial Users and other users  
8 with nondomestic discharges to prevent or at least minimize future violations, and the POTW is  
9 ultimately responsible under its NPDES discharge permit for the constituents in the treated  
10 wastewater released from its facilities into the waters of the state, (*see, e.g.*, NPP Order,  
11 Attach. 2 ¶ 1, at 2 (requiring that Vancouver "consistently maintain the effluent limitations for its  
12 discharges as set forth in its ... NPDES[] permits.").)

13 EFSEC is not well positioned to develop and maintain the necessary detailed knowledge  
14 regarding each POTW accepting nondomestic discharges from a regulated energy facility. Nor  
15 is it sufficiently staffed or funded to develop, implement and manage a pretreatment program  
16 regulating all of these discharges. In contrast, Ecology has been operating the statewide  
17 pretreatment program since 1986 and over this 30-year period has worked cooperatively with  
18 numerous POTWs to establish and update their pretreatment permitting programs.<sup>14</sup> (*See*  
19 Ecology MOA, Attach. 1 § I at 1.) Vancouver was required, as part of the process for delegation  
20 of pretreatment authority, to provide a detailed description of its capabilities to perform the  
21 functions necessary to operate a pretreatment permitting program. (NPP Order, Attach. 2 at 2.)  
22

23  
24 <sup>14</sup> For example, Ecology worked closely and cooperatively with Vancouver over a period of years to  
comprehensively update Vancouver's Industrial Pretreatment Program Manual, which now spans four volumes.  
(Dick Aff. ¶ 7, at 2.)

1           Moreover, if EFSEC began issuing pretreatment permits, it could become legally  
2 responsible for ensuring that each POTW for which EFSEC issued permits complied with the  
3 applicable NPDES discharge permits for discharge of treated effluent to waters of the state. In  
4 essence, EFSEC would step into Ecology's shoes and would be directly responsible for state  
5 implementation of the pretreatment program within the scope of its jurisdiction. For example,  
6 EFSEC may be required to "seek such legislation, adopt such regulations, provide Attorney  
7 General opinions, and take such further actions which may be necessary to preserve and maintain  
8 any compliance with NPDES Program requirements." (Ecology MOA, Attach. 1 § VII.E at 17.)  
9 In addition, EFSEC could open itself up to CWA citizen suits under 33 U.S.C. § 1365.<sup>15</sup>

10           In addition, EFSEC may incur derivative liability due to the high degree of state control  
11 exercised over regulated POTW's pursuant to the National Pretreatment Program. In an  
12 analogous context, the Supreme Court held the state responsible for Skagit County's actions as  
13 the state's agent for implementation of the Shoreline Management Act of 1971, ch. 90.58 RCW.

14           In *Orion Corp. v. State*, 109 Wash.2d 621, 643-44, 747 P.2d 1062[, 1074-75]  
15 (1987) [(en banc)], *cert. denied*, 486 U.S. 1022, 108 S. Ct. 1996, 100 L. Ed. 2d  
16 227 (1988), the court held that a taking which allegedly resulted from application  
17 of Skagit County's Shoreline Management Master Plan was the State's  
18 responsibility. It reasoned that the County adopted the master plan at the  
19 direction and control of the State, and thus, acted as the State's agent. *Orion*,  
20 109 Wash.2d at [644], 747 P.2d [at 1074]. Specifically, State regulations required  
21 the County to give preferences to certain uses and suggested that estuaries be left  
22 in their natural state. Moreover, the master plan became effective only after the  
23 State Department of Ecology approved it. [*Id.*] at 643, 747 P.2d [at 1074].

24  

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<sup>15</sup> See, e.g., Charlie Bermant, *Port of Port Townsend Agrees to Settlement Before Environmental Group Files Suit Over Stormwater Management*, PeninsulaDailyNews.com, Feb. 27, 2014, <http://www.peninsuladailynews.com/article/20140228/NEWS/302289962> (discussing settlement following issuance by Waste Action Project of notice of intent to sue the Port of Port Townsend for alleged violations of the CWA); Robert McClure, *Group Uses Lawsuits to Help Clean Up Sound: Citizens Take Aggressive Stand Against Pollution*, SeattlePI.com, Jan. 4, 2009, <http://www.seattlepi.com/local/article/Group-uses-lawsuits-to-help-clean-up-Sound-1296596.php> (discussing the approximately 60 CWA citizen lawsuits brought by Puget Soundkeeper Alliance against "food processors, factories, recyclers, timber yards, local governments and others").

1 *Klickitat County v. State*, 71 Wn. App. 760, 768, 862 P.2d 629, 634 (1993). Likewise, Ecology  
2 approves POTWs' detailed pretreatment program manuals, as illustrated by Ecology's letter to  
3 EPA dated August 18, 2010, attached as Attachment 5, (Dick Aff. ¶ 7, at 2), recommending  
4 approval of Vancouver's four-volume Industrial Pretreatment Program Manual. Thus, if EFSEC  
5 issues pretreatment permits, it may be liable as a principal for the regulated POTW's compliance  
6 with National Pretreatment Program requirements.

7 A POTW receiving nondomestic discharges permitted by EFSEC likewise would be  
8 placed in a completely untenable position. The POTW would control pretreatment permitting for  
9 only some of its nondomestic users, but would be subject to enforcement actions for failure of its  
10 discharges to meet water quality standards regardless of the cause. As a practical matter,  
11 POTWs may simply refuse to accept discharges from energy facility industrial users with  
12 pretreatment permits issued by EFSEC, which could precipitate a water quality crisis.<sup>16</sup>  
13 Fortunately, EFSEC is not statutorily required to assume these water quality responsibilities, but  
14 rather is charged with ensuring that the proposed energy facility meets the relevant state  
15 requirements related to its location, construction, and operational conditions of certification.

## 16 VI. CONCLUSION

17 While the Applicant apparently concluded that it must apply to Vancouver for a permit to  
18 discharge industrial wastewater to the POTW, Vancouver, for all of the foregoing reasons,  
19 respectfully requests that EFSEC issue an order making the legal determination that it lacks  
20 jurisdiction and authority to issue such a permit to remove any doubt regarding the issue.

21  
22  
23 <sup>16</sup> See *Vine Street Commercial Partnership v. City of Marysville*, 98 Wash. App. 541, 552, 989 P.2d 1238, 1244  
24 (1999), *review denied*, 141 Wash.2d 1006, 10 P.3d 1075 (2000) (noting that a city “undoubtedly has the authority to require that [the users] comply with reasonable regulations with respect to the use of the city sewer system”); VMC 14.10.560(D) (providing that Vancouver may withdraw the privilege of discharging to its POTW for “[v]iolation of the Pretreatment Standards”).

1 Dated: March 29, 2016

2 Respectfully Submitted,  
3 CITY ATTORNEY'S OFFICE  
4 VANCOUVER, WASHINGTON

5 By:



6 E. Bronson Potter, WSBA No. 9102

City Attorney, [Bronson.Potter@cityofvancouver.us](mailto:Bronson.Potter@cityofvancouver.us)

7 Karen L. Reed, WSBA No. 40095

Asst. City Attorney, [Karen.Reed@cityofvancouver.us](mailto:Karen.Reed@cityofvancouver.us)

8 P.O. Box 1995

Vancouver, WA 98668

Office: (360) 487-8500

9 Facsimile: (360) 487-8501

10 Copy to: [Tammy.Zurn@cityofvancouver.us](mailto:Tammy.Zurn@cityofvancouver.us)

11 Also appearing for the City of Vancouver:

12 Susan Elizabeth Drummond, WSBA No. 30689

[susan@susandrummond.com](mailto:susan@susandrummond.com)

13 Law Offices of Susan Elizabeth Drummond, PLLC

5400 Carillon Point, Bldg. 5000, Ste. 476

14 Kirkland, WA 98033

Office: (206) 682-0767

15 Facsimile: (425) 576-4040

CERTIFICATE OF SERVICE

I certify that on the date provided below, I e-mailed a copy of the 1) City of Vancouver's Motion for Order Ruling that EFSEC Lacks Authority to Issue Pretreatment Discharge Permit with five Attachments, 2) Affidavit of Karen Reed, and 3) Affidavit of Frank Dick to all parties or their counsel of record as listed below:

Kelly J. Flint  
Tesoro Savage Petroleum Terminal, LLC  
110 Columbia Blvd, Suites 108 & 110  
Vancouver, WA 98660  
Tel: (801) 944-6600  
kellyf@savageservices.com  
**Applicant, Tesoro Savage Petroleum Terminal LLC**

- Via Hand delivery or leaving same at his/her office with clerk or other person in charge
- Via First Class Mail/Postage Prepaid
- Via Email
- Via Facsimile

Jay P. Derr  
Van Ness Feldman, LLP  
719 Second Avenue, Suite 1150  
Seattle, WA 98104-1728  
Tel: (206) 623-9372  
jpd@vnf.com  
**Attorney for Applicant, Tesoro Savage Petroleum Terminal LLC**

- Via Hand delivery or leaving same at his/her office with clerk or other person in charge
- Via First Class Mail/Postage Prepaid
- Via Email
- Via Facsimile

Matt Kernutt  
Office of the Attorney General  
1125 Washington Street S.E.  
P.O. Box 40100  
Olympia, WA 98504-0100  
Tel: (360) 586-0740  
matinkl@atg.wa.gov  
**Counsel for the Environment**

- Via Hand delivery or leaving same at his/her office with clerk or other person in charge
- Via First Class Mail/Postage Prepaid
- Via Email
- Via Facsimile

Brian Bolender, Director  
Department of Commerce  
1011 Plum Street S.E.  
Olympia, WA 98504-2525  
Tel: (360) 725-4021  
brian.bolender@commerce.wa.gov  
**Department of Commerce**

- Via Hand delivery or leaving same at his/her office with clerk or other person in charge
- Via First Class Mail/Postage Prepaid
- Via Email
- Via Facsimile

1 Maia D. Bellon, Director  
2 Department of Ecology  
3 300 Desmond Drive  
4 Olympia, WA 98504-7600  
5 Tel: (360) 407-7001  
6 maia.bellon@ecy.wa.gov  
7 **Department of Ecology**

- Via Hand delivery or leaving same at his/her office with clerk or other person in charge
- Via First Class Mail/Postage Prepaid
- Via Email
- Via Facsimile

5 Phil Anderson, Director  
6 Department of Fish and Wildlife  
7 1191 Second Avenue, Suite 2200  
8 Seattle, WA 98101  
9 Tel: (360) 902-2720  
10 philip.anderson@dfw.wa.gov  
11 **Department of Fish and Wildlife**

- Via Hand delivery or leaving same at his/her office with clerk or other person in charge
- Via First Class Mail/Postage Prepaid
- Via Email
- Via Facsimile

9 Terence A. Pruit  
10 Assistant Attorney General  
11 Natural Resources Division  
12 1125 Washington Street S.E.  
13 P.O. Box 40100  
14 Olympia, WA 98504-0100  
15 Tel: (360) 586-0642  
16 terryp@atg.wa.gov  
17 RESOlyEF@atg.wa.gov  
18 **Department of Natural Resources**

- Via Hand delivery or leaving same at his/her office with clerk or other person in charge
- Via First Class Mail/Postage Prepaid
- Via Email
- Via Facsimile

14 David Danner  
15 Utilities and Transportation Commission  
16 1300 S. Evergreen Park Drive S.W.  
17 P.O. Box 47250  
18 Olympia, WA 98504-7250  
19 Tel: (360) 664-1208  
20 ddanner@utc.wa.gov  
21 **Utilities and Transportation Commission**

- Via Hand delivery or leaving same at his/her office with clerk or other person in charge
- Via First Class Mail/Postage Prepaid
- Via Email
- Via Facsimile

19 Lynn Peterson  
20 Department of Transportation  
21 310 Maple Park Avenue S.E.  
22 P.O. Box 47300  
23 Olympia, WA 98504-7300  
24 Tel: (360) 705-7054  
lynnp@wsdot.wa.gov  
**Department of Transportation**

- Via Hand delivery or leaving same at his/her office with clerk or other person in charge
- Via First Class Mail/Postage Prepaid
- Via Email
- Via Facsimile

1 Taylor Hallvik  
Deputy Prosecuting Attorney  
2 Clark County Prosecutor's Office  
Civil Division  
3 P.O. Box 5000  
Vancouver, WA 98666-5000  
4 Tel:  
taylor.hallvik@clark.wa.gov  
5 **Attorney for Clark County**

Via Hand delivery or leaving same at  
his/her office with clerk or other  
person in charge  
 Via First Class Mail/Postage Prepaid  
 Via Email  
 Via Facsimile

6 David F. Bartz, Jr.  
Schwabe, Williamson & Wyatt, P.C.  
7 1211 S.W. Fifth Avenue, Suite 1900  
Portland, OR 97204-3795  
8 Tel: (503) 796-2907  
dbartz@schwabe.com  
9 **Attorney for Port of Vancouver**

Via Hand delivery or leaving same at  
his/her office with clerk or other  
person in charge  
 Via First Class Mail/Postage Prepaid  
 Via Email  
 Via Facsimile

10 Alicia L. Lowe  
Schwabe, Williamson & Wyatt, P.C.  
11 Vancouver Center  
700 Washington Street, Suite 701  
12 Vancouver, WA 98660  
Tel: (360) 905-1427  
13 alowe@schwabe.com  
**Attorney for Port of Vancouver**

Via Hand delivery or leaving same at  
his/her office with clerk or other  
person in charge  
 Via First Class Mail/Postage Prepaid  
 Via Email  
 Via Facsimile

14 Donald L. English  
15 Scott Russon  
12204 S.E. Mill Plain Blvd., Suite 200  
16 Vancouver, WA 98684  
Tel: (360) 449-6100  
17 english@elmbv.com  
russon@elmbv.com  
18 **Attorneys for City of Washougal**

Via Hand delivery or leaving same at  
his/her office with clerk or other  
person in charge  
 Via First Class Mail/Postage Prepaid  
 Via Email  
 Via Facsimile

19 Cager Clabaugh  
20 Jared Smith  
International Longshore Warehouse Union  
Local 4  
21 1205 Ingalls Road  
Vancouver, WA 98660  
22 Tel: (360) 903-7678; Tel: (360) 241-0314  
cagerclabaugh@aol.com  
23 mithared@yahoo.com  
**Members of ILWU Local 4**

Via Hand delivery or leaving same at  
his/her office with clerk or other  
person in charge  
 Via First Class Mail/Postage Prepaid  
 Via Email  
 Via Facsimile

1 Julie A. Carter  
Robert C. Lothrop  
2 Columbia River Inter-Tribal Fish Commission  
700 N.E. Multnomah Street, Suite 1200  
3 Portland, OR 97213  
Tel: (503) 238-0667  
4 carj@critfc.org  
lotr@critfc.org  
5 **Columbia River Inter-Tribal Fish Commission**

Via Hand delivery or leaving same at his/her office with clerk or other person in charge  
 Via First Class Mail/Postage Prepaid  
 Via Email  
 Via Facsimile

6 Linda R. Larson  
Marten Law, PLLC  
7 1191 Second Ave, Suite 2200  
Seattle, WA 98101  
8 Tel: (206) 292-2600  
llarson@martenlaw.com  
9 **Attorneys for Columbia Waterfront LLC**

Via Hand delivery or leaving same at his/her office with clerk or other person in charge  
 Via First Class Mail/Postage Prepaid  
 Via Email  
 Via Facsimile

10 Daniel Timmons  
Marten Law, PLLC  
11 1001 S.W. Fifth Avenue, Suite 1500  
Portland, OR 97217  
12 Tel: (503) 243-2200  
dtimmons@martenlaw.com  
13 **Attorneys for Columbia Waterfront LLC**

Via Hand delivery or leaving same at his/her office with clerk or other person in charge  
 Via First Class Mail/Postage Prepaid  
 Via Email  
 Via Facsimile

14 Nancy Isserlis, City Attorney  
Michael J. Piccolo, Assistant City Attorney  
15 Office of the City Attorney  
5<sup>th</sup> Floor Municipal Building  
16 W. 808 Spokane Falls Blvd.  
Spokane, WA 99201  
17 Tel: (509) 625-6225  
nisserlis@spokanecity.org  
mpiccolo@spokancity.org  
18 **Attorneys for City of Spokane**

Via Hand delivery or leaving same at his/her office with clerk or other person in charge  
 Via First Class Mail/Postage Prepaid  
 Via Email  
 Via Facsimile

19 Brent H. Hall  
20 Office of Legal Counsel  
Confederated Tribes of the Umatilla  
21 Indian Reservation  
46411 Timine Way  
22 Pendleton, OR 97801  
Tel: (541) 429-7407  
23 brenthall@ctuir.org  
24 **Attorney for Confederated Tribes of the Umatilla Indian Reservation**

Via Hand delivery or leaving same at his/her office with clerk or other person in charge  
 Via First Class Mail/Postage Prepaid  
 Via Email  
 Via Facsimile

1  
2 R. Joseph Sexton  
3 Galanda Broadman PLLC  
4 8606 – 35<sup>th</sup> Avenue N.E., Suite L1  
5 P.O. Box 15146  
6 Seattle, WA 98115  
7 Tel: (206) 557-7509  
8 joe@galandabroadman.com

9 ***Attorney for Confederated Tribes of the Umatilla  
10 Indian Reservation***

[ ] Via Hand delivery or leaving same at  
his/her office with clerk or other  
person in charge  
[ ] Via First Class Mail/Postage Prepaid  
[X] Via Email  
[ ] Via Facsimile

7 Kristen L. Boyles  
8 Janette K. Brimmer  
9 Matthew R. Baca  
10 Earthjustice  
11 705 Second Avenue, Suite 203  
12 Seattle, WA 98104  
13 Tel: (206) 334-7340  
14 kboyles@earthjustice.org  
15 jbrimmer@earthjustice.org  
16 mbaca@earthjustice.org

17 ***Earthjustice***

[ ] Via Hand delivery or leaving same at  
his/her office with clerk or other  
person in charge  
[ ] Via First Class Mail/Postage Prepaid  
[X] Via Email  
[ ] Via Facsimile

13 David Bricklin  
14 Bryan Telegin  
15 Bricklin & Newman LLP  
16 1001 Fourth Avenue, Suite 3303  
17 Seattle, WA 98154  
18 Tel: (206) 264-8600  
19 bricklin@bnd-law.com  
20 telegin@bnd-law.com

21 ***Attorneys for Columbia Riverkeeper et al***

[ ] Via Hand delivery or leaving same at  
his/her office with clerk or other  
person in charge  
[ ] Via First Class Mail/Postage Prepaid  
[X] Via Email  
[ ] Via Facsimile

22 I declare under penalty of perjury under the laws of the State of Washington that the  
23 foregoing is true and correct.

24 EXECUTED this 29th day of March, 2016, in Vancouver, Washington.

  
Deborah L. Hartsoch, CRP, Legal Assistant  
City of Vancouver

Version 6 (8/15/89)  
FINAL

## NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

MEMORANDUM OF AGREEMENT  
BETWEEN THE  
WASHINGTON DEPARTMENT OF ECOLOGY  
AND THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

RECEIVED

AUG 23 '89

EPA-WOO

Section I. General Policies

This Memorandum of Agreement (hereafter "Agreement" or "MOA") establishes policies, responsibilities and procedures pursuant to 40 CFR Part 123 and defines the manner in which the National Pollutant Discharge Elimination System (NPDES) will be administered by the State of Washington, Department of Ecology (hereinafter Ecology) and reviewed by Region 10 of the United States Environmental Protection Agency (hereinafter "EPA"). This MOA replaces the Memorandum of Agreement between EPA and Ecology approved November 9, 1973, and includes the pretreatment MOA of September 30, 1986, as an appendix.

The Director of Ecology and the Regional Administrator hereby agree to maintain a high level of cooperation and coordination in a partnership to assure successful and effective administration of NPDES. If requested by either party, meetings between the State and EPA will be scheduled at reasonable intervals to review specific operating procedures, resolve problems, or discuss material concerns involving the administration of the State's permit program.

In this partnership, EPA will provide to Ecology on a continuing basis, technical and other assistance on permit matters as requested. Ecology has primary responsibility for implementing the NPDES program for the State of Washington. Ecology will administer the NPDES program in accordance with section 402 of the Federal Clean Water Act (CWA), 33 U.S.C. §1251 et. seq. (hereinafter CWA), applicable State legal authority, the requirements of 40 CFR Parts 122-125 and any other applicable Federal regulations, and the annual State 106 program plan. Ecology has the primary responsibility to establish State NPDES program priorities which are consistent with national NPDES goals and objectives.

The strategies and priorities for issuance, compliance monitoring and enforcement of permits, as established in this MOA, may be set forth in more detail in the annual State 106 program plan and the State/EPA Compliance Assurance Agreement signed by the Director of Ecology and the Regional Administrator of EPA Region 10. The State 106 program plan, the State/EPA Compliance Assurance Agreement and any other State/EPA agreement(s) regarding the NPDES program will be consistent with this MOA as required by 40 CFR §123.24(c).

If Ecology finds that they cannot comply with EPA program policy, then either Ecology or EPA may initiate negotiations to resolve differences with such policies.

## Section II. Program Responsibilities

### A. Ecology Responsibilities

In accordance with the priorities and procedures established in this Agreement and the annual State Program Plan, Ecology will:

1. Develop and maintain, to the maximum extent possible, the legal authority (including State regulations) and the resources required to carry out all aspects of the NPDES program.
2. Process in a timely manner and propose to issue, reissue, or modify all NPDES permits. Permit applications by major dischargers will normally receive first priority in all NPDES activities, depending on water quality and public health considerations.
3. Comprehensively evaluate and assess compliance with schedules, effluent limitations and other conditions in permits as outlined in section IV of this Agreement.
4. Maintain a vigorous enforcement program by taking timely and appropriate actions in accordance with the CWA, and as outlined in Section IV of this Agreement.
5. Maintain an adequate public file at the appropriate regional or central office (which must be easily accessible to EPA for audit purposes) for each permittee. Such files must, at a minimum include copies of:
  - Permit Application;
  - Draft or Proposed Permits Until Final Permit Issuance;
  - Issued Permit;
  - Public Notice and Fact Sheet (when prepared);
  - Discharge Monitoring Reports;
  - All Reports and Notifications Required by the Permit or Enforcement Action
  - All Inspection Reports;
  - All Enforcement Actions; and
  - Other pertinent information and correspondence.

6. Maintain an effective program to carry out the pretreatment responsibilities outlined in Section V of this Agreement;

7. Cooperate with EPA in the administration of the NPDES program in accordance with mutually agreed upon program policies and guidance.

8. Submit to the EPA the information described in section VI of this Agreement, the annual State program plan and applicable portions of 40 CFR Part 123. Additionally, upon request by EPA, Ecology will submit specific information and/or allow access to files necessary for evaluating Ecology's administration of the NPDES program.

B. EPA Responsibilities ;

1. EPA commits to funding Ecology to the maximum extent possible to support its NPDES activities.

2. EPA will provide technical support and assistance to Ecology in the following areas:

- Interpretations of Effluent Limitation Guidelines (ELG) regulations.
- Development of technology-based effluent requirements and related "best management practices," which include the use of "best professional judgment."
- General technical assistance in processing permit applications.

3. EPA will ensure that Ecology is kept fully informed and up to date concerning:

- EPA contractor reports; draft and final EPA development documents; and draft, proposed and final Effluent Limitation Guidelines (ELG) regulations for various industry categories. These will be coordinated, as appropriate, with Ecology's Water Quality Program.
- Draft and final settlement agreements between EPA and litigants which concern the interpretation or modification of ELG regulations for various industry categories.
- Draft, proposed, and final versions of EPA regulations, technical guidances, policy and procedures which pertain to implementation of the NPDES program and water quality planning program.

4. EPA will provide Ecology with the opportunity for meaningful involvement in program development activities and program initiatives. EPA will keep Ecology informed of development of NPDES program policy statements, strategies and related guidance, and provide for input by Ecology when appropriate.

5. As outlined in section VII of this Agreement, EPA will oversee the administration of NPDES on a continuous basis for consistency with the CWA, this Agreement, the annual program plan, and all applicable federal regulations and policies. EPA will, as a part of its assessment, consider among other things, review of permits, reports, and enforcement actions submitted by Ecology and may also consider comments from permittees, the public, and federal and local agencies concerning Ecology's administration of NPDES. Any such comments considered by EPA will be brought to the attention of Ecology by written correspondence if the commenting party has not previously communicated this comment to Ecology. Any information obtained or used by Ecology under the NPDES program will be available to EPA upon request without restriction except for information pertaining to ongoing criminal investigation. If the information has been submitted to Ecology under a claim of confidentiality, Ecology will inform EPA of that claim. Claims of confidentiality will be treated in accordance with 40 CFR Part 2, Subpart B; and 40 CFR 122.7 and applicable state laws. Both agencies will respect the confidentiality of materials designated CONFIDENTIAL in accordance with applicable Federal and state laws.

### Section III. Permit Review and Issuance

Ecology's NPDES program is carried out under WAC 173-220, and Ecology is responsible for expeditiously drafting, providing public notice for, issuing, modifying, reissuing, and terminating permits in accordance with section VI below, 40 CFR Parts 122-125 and any other applicable regulations.

#### A. Receipt of New Permit Applications by Ecology

Within thirty (30) working days of the receipt of a complete permit application, Ecology will enter all required information into EPA's National Permit Compliance System (PCS) via the Wastewater Discharge Information System (WDIS).

#### B. Permit Reissuance

All expiring NPDES permits will be reissued on or before their date of expiration. If such timely reissuance is not possible, Ecology will, through the SEA notify the Regional Administrator of the reasons for delay and agree on priorities for reissuance.

#### C. EPA Review of Draft Major and Negotiated Significant Minor Permits and Permit Modifications

1. Except as waived under Paragraph E of this section, Ecology will consult with the Regional Administrator before issuing public notice of a draft permit to ensure that the permit will comply with federal statutes and regulations. Ecology will transmit to the Regional Administrator appropriate portions of working documents in connection with the consultation.

2. Unless otherwise waived, EPA will review all draft major permits. At the time of issuance of public notice, Ecology will send the EPA one copy of the public notice, the draft permit, and the fact sheet (when prepared) for each facility. If the permit is for a possible new source under CWA section 306, the submittal must be accompanied by a new source/new discharger determination. The EPA will have 30 days to comment upon, object to, or make recommendations with respect to the draft permit. The time for EPA review will be extended to 90 days from date of draft upon request of EPA. The EPA will send to Ecology written agreement, comments, or objections to each draft permit, including a statement of the reasons for the comments or objections and the sections of the CWA or regulations which support them. A copy of all comments will also be sent to the permit applicant upon request. In the event EPA files a "general objection" to a draft permit, it will have 90 days from receipt of the draft permit to supply the specific grounds for objection, and the terms and conditions which should be included in the permit. If the initial permit information supplied by Ecology is inadequate to determine whether the draft permit meets the guidelines and requirements of the CWA, EPA may file an "interim objection" under 40 CFR 123.44(d) and request Ecology to transmit the complete record (or portion thereof) of Ecology's permit proceedings. The full period for EPA review will recommence upon receipt of the requested information.

3. If (a) the proposed final permit does not substantially differ from the draft permit defined in the public notice, (b) EPA has not objected to the draft permit, and (c) adequate consideration of public comments has been given by Ecology, Ecology may issue the permit without further review by EPA. In all other cases, Ecology will send one copy of the proposed final permit, recommendations of any other affected State, and copies of written comments and hearing records, including the response to comments prepared under 40 CFR 124.17 to EPA for review. Whenever Ecology prepares a written explanation to an affected State explaining the reasons for rejecting any of its written recommendations, Ecology will transmit a copy to the Regional Administrator. The EPA will, within 30 working days after receipt of the proposed final permit, notify Ecology and the permit applicant of any formal objections authorized under 402(d) of the Act. This notification will set forth in writing the general nature of the objection within ninety (90) days following receipt of the proposed final permit to which EPA has objected.

4. In the event the Regional Administrator objects to a permit under either paragraph C.2. or 3., above, the Regional Administrator will so notify Ecology in writing as to the reasons for the objection and the actions necessary to eliminate the objection. The EPA's objections must be based on one or more of the criteria identified in 40 CFR 123.44. Ecology has the right to a public hearing on the objection. If EPA's concerns are not satisfied within ninety (90) days of the notice of objection (or thirty (30) days following a public hearing on the objection), exclusive authority to issue the NPDES permit vests in EPA. Nothing herein affects the authority for Ecology to require and issue state waste discharge permits under RCW 90.48.160 and 162. All state waste discharge permits issued to carry out federal programs within the scope of this agreement will comply with applicable federal requirements.

D. New Source Permits

In the case of development of draft major and minor permits for new sources, Ecology will inform and meet with EPA, as needed, throughout the permitting process. New sources are defined as new facilities which will discharge wastewater into surface waters or an existing facility discharging a new pollutant. EPA will review minor new source permit information to determine which minor permits it wishes to review and will notify Ecology of those permits.

E. Waiver of Permit Review by EPA

1. Upon request to Ecology, EPA may review any other non-waived minor permit, per Section E, subject to the same resource and time constraints as major permits. At this time, EPA waives the right to comment on, or object to, the sufficiency of permit applications, draft permits, proposed final permits, and final (issued) permits for all discharges or proposed discharges with the exceptions of the categories described below:

- a. Discharges which may affect the waters of another State;
- b. Discharges proposed to be regulated by general permits (i.e., review general permits only, not each individual permit);
- c. Discharges from publicly owned treatment works with a daily average discharge exceeding one million gallons per day;
- d. Discharges of uncontaminated cooling water with a daily average discharge exceeding 500 million gallons per day;
- e. Discharges from any major discharger (as defined in SEA);
- f. Discharges from any discharger within any of the industrial categories listed in Appendix A to 40 CFR Part 122;
- g. Discharges from any other source with a daily average discharge exceeding 0.5 million gallons per day, except, discharges of non-process waste water;
- h. Discharges into the territorial sea or contiguous zone (as defined under General Definitions of the Clean Water Act as amended); and
- i. POTW's required to have a pretreatment program (40 CFR Part 403).

The foregoing does not include waiver of receipt of copies of all final permits issued, or any notices required under section V of this Agreement.

2. With respect to modifications or revocations and reissuances of permits, EPA waives the right to review any permit for which the right to review the original permit was waived (unless the modification would put the permit into one of the categories in paragraph E.1 above) or qualifies as a minor modification as defined in 40 CFR 122.63.

3. Ecology recognizes the right of EPA, in accordance with 40 CFR 123.24(e)(1)(2), to terminate the waivers in paragraphs 1 and 2 above (in whole or in part) at any time. Any such termination will be made in writing to Ecology.

4. The foregoing waiver will not be construed to authorize the issuance of permits which do not comply with applicable provisions of Federal, State or local laws, rules, regulations, or effluent guidelines, nor to relinquish the right of EPA to petition Ecology for review of any action or inaction because of violation of Federal, State or local laws, rules, regulations, or effluent guidelines.

#### F. Public Participation

1. Permit applications, draft permits, public notices, and fact sheets or statement of basis (when prepared) will be made available to any party upon request upon payment of applicable State duplicating fees.

2. Ecology will prepare and distribute copies of all public notices and fact sheets, to all potentially affected parties, in accordance with 40 CFR 124.8 and 124.10 and WAC 173-220-050, 060, 070 unless otherwise waived by the specific organization.

3. All draft general permits, major NPDES permits, and pretreatment program approvals will be public noticed in a daily or weekly newspaper within the area affected by the activity, in accordance with 40 CFR 124.10(c)(2)(i) and WAC 173-220-050.

#### G. Issuance of Permits or Notice of Intent to Deny

1. If the final determination is to issue the permit, the final permit will be forwarded to the permit applicant, along with a transmittal letter notifying the applicant that the permit is being issued. Copies of issued permits will be forwarded to EPA in accordance with the schedule contained in section V of this Agreement.

2. If the final determination is to deny the permit, notice of intent to deny will be given to EPA and to the applicant in accordance with NPDES regulations.

#### H. Termination, Modification, Revocation and Reissuance of Permits

Except as waived in paragraph E.2 above, Ecology will notify EPA whenever it terminates an issued NPDES permit. In addition, Ecology will transmit to EPA a copy of any permit which it proposes to modify or revoke and reissue with the proposed changes clearly identified. The procedure set forth in paragraphs C.2 and 3 above will be followed with respect to modifications by Ecology of any issued permit and, for purposes of this agreement, each permit proposed to be modified will be deemed to be a newly proposed draft permit, except as limited in 40 CFR 122.63.

#### I. Administrative or Court Action

If the terms of any permit, including any NPDES permit for which review has been waived pursuant to Paragraph E above, are affected in any manner by legislative, administrative or court action, Ecology will immediately transmit a copy of the permit, with changes identified, to the Regional Administrator and will allow 30 days for EPA to make written objections to the changed permit pursuant to section 402(d)(2) of the CWA.

If Ecology proposes to issue any permit, that does not meet all applicable federal requirements, it will notify EPA and allow opportunity for review and objection according to Paragraph C.

#### J. Major Discharger List

There will be included as a part of the annual program plan a "major dischargers" list, which will include those dischargers mutually defined by Ecology and EPA as major dischargers.

#### K. Variances

Consistent with time limitations contained in the 1987 Clean Water Act (CWA), Ecology will conduct an initial review of all requests for fundamentally different factors (FDF) variances, for variances under §301(c), (g), (i), (k), and 316(a) of the CWA, and for modifications to federal effluent limitations established under section 302 of the CWA.

1. With regard to §301(i) and (k) and 316(a) variances, Ecology may deny or approve the request. A copy of the determination will be sent to the requester and EPA.

2. With regard to FDF and 301(c) and (g) variances, and §302 modifications, Ecology may determine to deny the request, and such determination will be forwarded to the requester and EPA. If Ecology determines that factors do exist that may warrant such a variance, the request and recommendation for approval will be sent to EPA. If EPA denies a variance request, Ecology will so notify the requester. If EPA approves a variance request, Ecology may then prepare a draft permit factoring in the variance.

L. Evidentiary Hearings (Appeals to Pollution Control Hearings Board)

Ecology will provide EPA with a copy of all precedent setting settlements and administrative decisions which impact Ecology's ability to implement the NPDES program in accordance with the federal requirements.

Section IV. Enforcement

Ecology agrees to maintain a vigorous enforcement program, as defined in the Compliance Assurance Agreement (CAA) signed in June 1986, including any subsequent amendments.

A. Compliance Monitoring

Ecology will operate a timely and effective compliance monitoring program including PCS or an interface to PCS.

1. Compliance Review - Ecology will conduct timely and substantive reviews and keep complete records of all written material relating to the compliance status of NPDES permittees, including Compliance Schedule Reports, Discharge Monitoring Reports, Compliance Inspection Reports, and any other reports that permittees may be required to submit under the terms and conditions of a NPDES permit, approved pretreatment program (when applicable), or enforcement action.

Ecology will operate a system to determine if:

- The self-monitoring reports required by permit or pretreatment regulations are submitted;
- The submitted reports are complete and accurate; and
- The permit conditions and pretreatment requirements (when applicable) are met.

Ecology and EPA will have periodic enforcement conferences, either in person or by telephone, to decide priorities for initiating enforcement actions.

Ecology will initiate appropriate enforcement actions consistent with the Compliance Assurance Agreement whenever required performance is not achieved or when reports are not received. In the case of violation by a major discharger Ecology will initiate an appropriate action within 45 days of the date Discharge Monitoring Reports were or should have been received by the State. Priorities for initiating enforcement actions are specified in the Department's Enforcement Guidelines.

2. Compliance Inspection - Ecology will conduct field activities to determine the status of compliance with permit requirements including sampling and nonsampling inspections. Inspection procedures will be in accordance with EPA's NPDES Compliance Evaluation Inspection Manual, 1976, updated 1980 or any supplemental revisions or Ecology's inspection guidance. For purposes of this MOA, the term "compliance inspections" includes evaluation inspections/performance audits (Class I inspections), and sampling inspections/biomonitoring inspections (Class II inspections).

Ecology will conduct compliance inspections of all of the major permittees on at least an annual basis. The list of inspections to be conducted each year may be modified with the concurrence of both parties. Ecology will also furnish an estimate of the number of other compliance inspections to be performed during the year. When requested by EPA, Ecology will give EPA the opportunity to participate in its inspection activities.

The EPA or Ecology may determine that additional compliance inspections are necessary to assess permit compliance. If EPA makes a determination that additional compliance inspections are necessary, it will notify Ecology and may request Ecology to conduct these inspections. EPA retains the right to perform compliance inspections of any permittee at any time, but will notify Ecology to give it an opportunity to participate and will otherwise keep Ecology informed of its plans and the results of such EPA inspections.

Ecology will also be responsible for transmitting all inspection data to PCS and preparing a list of all noncomplying major permittees in accordance with the regulations in 40 CFR 123.45.

Compliance inspection reports for major permittees will be provided by Ecology to EPA for review, as appropriate, within 30 days of the date of the inspection unless a longer time period is necessary due to lab analysis. Ecology will thoroughly review each report to determine what, if any, enforcement action will be initiated. Where the results of the inspection(s) indicate that the discharger has a violation which meets Ecology's Enforcement criteria, Ecology will initiate timely and appropriate enforcement action consistent with the Enforcement Guidelines or make a decision in writing to exercise enforcement discretion not to take any action. All significant violations shall be noted in the report.

EPA will provide Ecology with compliance inspection reports on state regulated facilities, for review, 15 days prior to submitting report to the permittee.

3. Information Request - Whenever either party requests information concerning a specific discharger and the requested information is available from the files, that information will be available to the other agency for review and copying and/or will be provided within a reasonable time, consistent with State Public Disclosure Act, Chapter 47.17 RCW.

B. Action Against Violators

Ecology is responsible for taking timely and appropriate enforcement action against persons in violation of compliance schedules, effluent limitations, reporting requirements, other permit conditions, and other NPDES program requirements.

Ecology will immediately notify EPA, by telephone or otherwise, of any situation posing a substantial endangerment to health, welfare, or the environment resulting from the actual or threatened direct or indirect discharge of pollutants into waters of the State.

Ecology will maintain procedures for receiving and ensuring proper consideration of information submitted by the public about violations. If EPA determines that Ecology has not initiated timely and appropriate enforcement action against a violator, EPA may proceed with any or all of the enforcement options available under section 309 of the CWA after notice to and consultation with Ecology. Prior to proceeding with an enforcement action, EPA will give Ecology 30 days to initiate such enforcement action. This notification may be made by telephone and with follow-up by written communication. Such notifications will not be required when EPA is exercising its emergency power under section 504 of the CWA.

Ecology agrees to follow the policies, principles, procedures, etc. in Ecology's Enforcement Manual: Guidelines and Procedures.

Section V: Pretreatment

A. General

This section is intended to define Ecology and EPA responsibilities for the establishment, implementation, and enforcement of the National Pretreatment Program as stated in the addendum to the NPDES MOU between Ecology and EPA of September 30, 1986, and pursuant to section 307, and 402(b) of the Clean Water Act (hereinafter the Act) as follows.

Ecology has, either directly or through local program oversight, primary responsibility for:

- 1) enforcing against discharges prohibited by 40 CFR 403.5;
- 2) applying and enforcing National Categorical Pretreatment Standards established by the EPA in accordance with section 307 (b) and (c) of the Act, local Publicly Owned Treatment Works (POTW) standards, and State standards, whichever apply or are more stringent;
- 3) reviewing and approving POTW pretreatment programs in accordance with the procedures discussed in 40 CFR 403.8 and Chapter 173-216 WAC;

- 4) requiring a pretreatment program in NPDES permits issued to POTWs as required in 40 CFR 403.8 and 403.9, and as provided in section 402(b)(8) of the Act;
- 5) including conditions of a POTW pretreatment program in the POTW's NPDES permit or director's findings and orders;
- 6) overseeing and enforcing POTW pretreatment programs to ensure compliance with requirements specified in 40 CFR 403.8, and in the POTW's NPDES permit;
- 7) regulating in accordance with 40 CFR Part 403.10(e) and Chapter 173-216 WAC industrial dischargers to POTWs without pretreatment programs;
- 8) requiring industrial reports as outlined in 40 CFR 403.12;
- 9) requiring POTWs as outlined in 40 CFR Part 403.5(b)(2) to develop and enforce local limitations where recurring pass-through or interference exist.

EPA will overview the Ecology pretreatment program operations consistent with 40 CFR Part 403 regulations and this MOA.

Ecology shall perform inspection, surveillance and monitoring activities which will determine, independent of information supplied by the POTW, compliance or noncompliance by the POTW with pretreatment requirements incorporated into the POTW permit; and carry out inspection, surveillance and monitoring activities which will determine, independent of information supplied by the industrial user, whether the industrial user is in compliance with pretreatment standards.

The Water Division Director will be provided 30 days to review and comment upon, object to, or make recommendations with respect to proposed major POTW NPDES permits or modifications containing pretreatment conditions for local programs. However, if the EPA Water Division Director so requests in writing, an additional 60 days shall be given for such review. The Water Division Director shall notify Ecology in writing, within the allowed period, that the EPA concurs or objects to the state's determination. If EPA objects to certain conditions, it shall set forth the reasons for the objections and the actions that must be taken by Ecology to remove the objection.

B. Section 403.6 National Pretreatment Standards: Categorical Determinations

Ecology shall review requests from industrial users or POTWs for certification under 40 CFR Part 403.6(a) as to whether the industrial user does or does not fall within a particular industrial category. Ecology will make a written determination for each request stating the reasons for the determination. Ecology shall then forward its findings together with a copy of the request and necessary supporting information, to the Water Division Director for concurrence. If EPA does not modify the Ecology decision within 60 days after receipt thereof, the Ecology finding is final. Where the request is submitted to EPA, such request will be forwarded to Ecology for determination and then sent back to the Water Division Director for concurrence. Where EPA elects to modify Ecology's decision, the Water Division Director determination and explanation will be forwarded to Ecology for review. Ecology will have 30 days from the receipt of the determination to comment. At the end of that period the Water Division Director shall consider any comments received and shall make a final determination. A copy of the final determination shall be sent to the requester and to Ecology.

C. Section 403.9 POTW Pretreatment Program Approvals

Ecology shall review and approve applications for POTW pretreatment program authority in accordance with 40 CFR Part 403.11(a)(b)(c) and (e). Ecology shall submit its findings together with the application and supporting information to the Water Division Director for review. No POTW pretreatment program shall be approved by Ecology if EPA objects in writing to the approval of such submission in accordance with 40 CFR Part 403.11(d).

D. Section 403.13 Variances From Categorical Pretreatment Standards for Fundamentally Different Factors

Ecology shall make an initial finding on all requests from industrial users for variances from categorical pretreatment standards, where the request is based on the allegation of the existence of fundamentally different factors. Where Ecology's initial finding is to approve the request, the finding, together with the request and supporting information, shall be forwarded to the Water Division Director for a final determination. Ecology may deny, but not approve a fundamentally different factors variance request until written approval has been received from EPA.

E. Miscellaneous

Ecology will submit to the Water Division Director a list of POTWs which are required to develop their own pretreatment program or are under investigation by Ecology for the possible need of a local pretreatment program. Ecology may modify this list without requiring modification of this MOA. POTWs with approved pretreatment programs may not be deleted without approval of the EPA Water Division Director.

Ecology and EPA will communicate, through the State-EPA Agreement (SEA) planning process, commitments and priorities for program implementation.

F. Other Provisions

Nothing in this agreement is intended to affect any pretreatment requirement, including any standards or prohibitions established by state or local law, as long as the state or local requirements are not less stringent than any set forth in the National Pretreatment Program, or other requirements or prohibitions established under the Act or regulation.

Section VI. Reporting and Transmittal of Information

A. Ecology will maintain PCS database consistent with Amended National PCS Policy, dated March 23, 1988 (see Section 1) and will submit the following to EPA:

<u>Item</u>	<u>Description</u>	<u>Frequency of Submission</u>
1.	A copy of all permit applications except those for which EPA has waived review.	When draft permit completed
2.	Copies of all draft NPDES permits and permit modifications including fact sheets except those for which EPA has waived review.	When draft permit completed
3.	Copies of all public notices, except those for which EPA has waived review.	When draft permit completed
4.	A copy of all issued, reissued and modified NPDES permits.	As issued
5.	Copies of any permit applications and public notices for which EPA has waived review.	Upon written request
6.	A copy of settlements and decisions in permit appeals.	As issued
7.	A list of major facilities scheduled for compliance inspections.	With submission of the annual program plan
8.	Proposed revisions to the scheduled compliance inspections.	As needed
9.	A list of compliance inspections performed during the previous quarter.	As part of PCS

- |     |  |  |
|-----|--|--|
| 10. | Copies of any compliance inspection reports, report forms, data, and transmittal letters to major permittees.                                  | Within 30 days after inspection unless a longer time period is necessary due to lab analysis   |
| 11. | Copies of all compliance inspection reports and data transmittal letters to all other permittees.  | Upon written request   |
| 12. | For major dischargers, a quarterly noncompliance report as specified in 40 CFR 123.45(a) and further qualified in EPA Guidance (see Section 1) | Quarterly, as specified in 40 CFR 123.45(c) and in the Compliance Assurance Agreement  |
| 13. | For minor dischargers, an annual non-compliance report as specified in 40 CFR 123.45(b)  | Within 60 days of the end of the calendar year as specified in 40 CFR 123.45(c)  |
| 14. | Copies of all enforcement actions against NPDES violators (including, notices of violation, administrative orders, and penalties)              | As issued  |
| 15. | Copy of pretreatment inspection reports on POTWs.  | As performed   |
| 16. | Number of industrial user inspection reports completed   | As requested   |
| 17. | Copies of Discharge Monitoring Report (DMR's) and noncompliance notification from major permittees   | Within 30 days of receipt, until such time as the PCS interface is, in EPA's opinion, providing necessary and accurate information to PCS. |

B. The EPA shall transmit the following information to the State:

<u>Item</u>	<u>Description</u>	<u>Frequency of Submission</u>
1.	A list of compliance inspections EPA intends to conduct jointly with the State as part of its State Overview Plan;	Annually
2.	Proposed revisions to the schedule of compliance inspections;	As needed
3.	All EPA compliance inspection reports and data;	Within 30 days of inspection

4. Copies of all EPA enforcement actions against NPDES violators (including notice of violation, administrative orders and penalties). As issued
5. A review of and report on the State's administration of the NPDES Permit Program based on State reports, meetings with State officials, and file audits. As performed
6. Up-to-date Federal Facility permit applications and permit. As issued
7. Permit information listed in A above for Federal Facilities which Ecology will use for Section 401 of Clean Water Act (State Certification). As performed

C. The State shall transmit a copy of every issued NPDES permit to each affected State no later than 30 days after its issuance.

#### Section VII. Program Review

A. To fulfill its responsibility for assuring the NPDES program requirements are met, EPA shall:

1. Review the information submitted by Ecology;
2. Meet with State officials from time to time to discuss and observe the data handling, permit processing, and enforcement procedures, including both manual and PCS data input processes;
3. Examine the files and documents at Ecology regarding selected facilities to determine: a) whether permits are processed and issued consistent with federal requirements; b) whether Ecology is able to discover permit violations when they occur; c) whether Ecology reviews are timely; and d) whether Ecology selection of enforcement actions is appropriate and effective. EPA shall notify Ecology in advance of any examination under this paragraph so that appropriate State officials may be available to discuss individual circumstances and problems. EPA need not reveal to Ecology in advance the files and documents to be examined. A copy of the examination report shall be transmitted to the State when available;
4. Review, from time to time, the legal authority upon which the State's program is based, including State statutes and regulations;
5. When appropriate, hold public hearings on Ecology's NPDES program; and
6. Review Ecology's public participation policies, practices and procedures.

B. Prior to taking any action to propose or effect any substantial amendment, rescission, or repeal of any statute, regulations, directive, or form which has been approved by EPA; and prior to the adoption of any new statute, regulation, directive or form, Ecology shall notify the Regional Administrator and shall transmit the text of any such change or new form to the Regional Administrator (see, 40 CFR 123.62 which provides that the change may trigger a program revision, which will not become effective until approved by EPA).

C. If an amendment, rescission, or repeal of any statute, regulations, directive, or form described in paragraph (B) above shall occur for any reason, including action by the Washington legislature or a court, Ecology shall, within 10 days of such event, notify the Regional Administrator and shall transmit a copy of the text of such revision to the Regional Administrator.

D. Prior to the approval of any alternate test method to those specified in 40 CFR Part 136 as required for NPDES permitting, Ecology will obtain the approval of the Regional Administrator.

E. Ecology will seek such legislation, adopt such regulations, provide Attorney General opinions, and take such further actions which may be necessary to preserve and maintain any compliance with NPDES Program requirements:

#### Section VIII. Independent EPA Powers

Nothing in this MOA shall be construed to limit the authority of EPA to take action pursuant to Sections 204, 208, 301, 304, 306, 307, 308, 309, 311, 402, 404, 405, 501, 504, or other sections of the Act (33 U.S.C. §1251 et. seq.).

#### Section IX. Independent State Powers

Nothing in this MOA will be construed to limit the authority of Ecology or the State of Washington to adopt or enforce any requirement that is more stringent than those required under federal law, or to operate a program that is more extensive in coverage or in scope than required by federal law.

#### Section X. Computations of Time

A. In computing any period of time prescribed by this MOA the day from which the designated period of time begins to run will not be included. The last day of the period will be included unless it is a Saturday, Sunday, or a legal holiday, in which case the period extends until the end of the next day which is not a Saturday, Sunday or a legal holiday. When the period of time is less than seven days, intermediate Saturdays, Sundays, or legal holidays will be excluded in the computation.

B. For the purpose of EPA review of permit applications, draft or proposed permits, or permit modifications, the period for review will not commence until received by EPA. EPA will notify Ecology in writing of the date of receipt.

#### Section XI. Modification

This MOA will take effect immediately upon approval by the Regional Administrator. Either Ecology or EPA may initiate action to modify this MOA at any time. If EPA or the Administrator of EPA determines that any modification to the MOA initiated by Ecology does not conform to the requirements of §402(b) of the CWA, or to the requirements of 40 CFR Parts 122-125 or any other applicable Federal regulation, as amended, the Regional Administrator or Administrator of EPA will notify Ecology in writing of any proposed revision, or modifications which must be in this agreement. Any proposed amendments or revisions must be put in writing and signed by Ecology and the Regional Administrator, with the prior concurrence of the Director, EPA Office of Water Enforcement and Permits and EPA Associate General Counsel for Water.

#### Section XII. Other Optional Provisions

##### 1. Special toxics programs

Ecology agrees to integrate toxic controls, in accordance with the 1987 Clean Water Act Amendments, into its NPDES permits. Specific goals for toxic reduction will be negotiated each year in the SEA.

#### Section XIII. Federal Facilities

Federal Facility authority has not been and is not, at this time, being delegated to the Washington Department of Ecology. Ecology recognizes that EPA considers this to be a program deficiency. The Department of Ecology, therefore, agrees to study the feasibility of seeking delegation of Federal Facilities in FY 90.

#### Section XIV. Indian Issues

The EPA has determined that Federal Law and policy preclude the agency from delegating its implementation and enforcement authority over Indian lands to a state except where Congress has expressly authorized such delegation. There is no such express authorization relevant to this agreement. In contrast to the position taken by EPA, the State of Washington has determined that EPA delegated responsibility for NPDES on Indian reservations in the original NPDES delegation MOA in 1973. Further, the state has determined that its own statutes and regulations provide jurisdiction which is parallel to, but independent of Federal authority.

Notwithstanding the different positions outlined above, the two agencies agree herein that EPA will retain its regulatory and program jurisdiction over Indian lands.

This agreement does not preclude Ecology from entering into cooperative arrangements, or MOAs, with Indian Tribes allowing the state to carry out various Federal water quality regulatory functions on reservations.

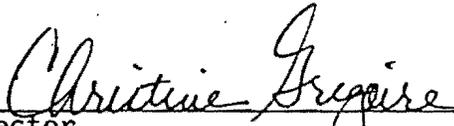
EPA and Ecology agree to attempt to avoid duplicative regulatory activities and to seek efficient means for achieving their related objectives.

The Department of Ecology agrees to give EPA the opportunity to copy the files for all dischargers on Indian lands.

EPA agrees to have Ecology review and comment on draft NPDES permits issued for facilities on Indian lands.

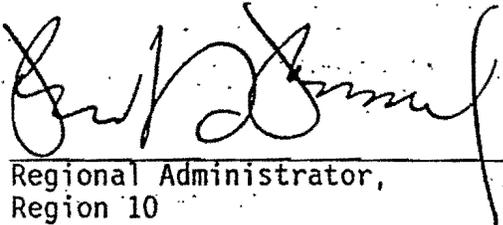
In witness whereof, the parties execute this agreement.

FOR WASHINGTON, DEPARTMENT OF ECOLOGY:

  
\_\_\_\_\_  
Director  
Washington Department of Ecology

  
\_\_\_\_\_  
(Date)

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

  
\_\_\_\_\_  
Regional Administrator,  
Region 10

JAN 09 1990  
\_\_\_\_\_  
(Date)

TB

ANDREA BEATTY RINKER  
Director



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

7272 Cleanwater Lane, LU-11 • Olympia, Washington 98504-6811 • (206) 753-2353

September 30, 1987

Victor Ehrlich  
The City of Vancouver  
210 E. 13th Street  
P.O. Box 1995  
Vancouver, Washington 98668

Dear Mr. Ehrlich:

Congratulations on the official approval of the industrial pretreatment program for the City of Vancouver. Your sincere efforts in developing a state equivalent program are commendable. The signed Approval and Delegation Order is enclosed.

In accordance with requirements contained in the Clean Water Act of 1977, and the General Pretreatment Regulations for existing and new sources of pollution (40 CFR Part 403), the 30-day public notice of our determination to approve the pretreatment program was issued. We received no significant comments during this period.

The City's Westside and Eastside NPDES permit conditions, sections S7(g) and S5(g), respectively, are considered final and enforceable as of the date of this letter. The City of Vancouver will be held accountable for meeting these pretreatment conditions.

I am confident you and your staff will implement a high quality program. I look forward to working with you as needed.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Elardo", written over a horizontal line.

Pamela A. Elardo  
District Engineer

PE:ss(1/1)

- cc: Robert S. Burd - EPA, Water Division  
Clark Gaulding - EPA, Washington Operations Office  
Dave Ragsdale - EPA, Washington Operations Office  
Bob Robichaud - EPA, Region X

**RECEIVED**

OCT 02 1987

Dept. of Public Works

DEPARTMENT OF ECOLOGY

APPROVAL AND DELEGATION OF )  
AUTHORITY TO THE CITY OF VANCOUVER )  
TO ADMINISTER A PERMIT PROGRAM FOR )  
INDUSTRIAL AND COMMERCIAL WASTE )  
DISCHARGES INTO ITS SEWERAGE SYSTEM )

ORDER  
No. DE 87-S188

TO: The City of Vancouver  
210 E. 13th Street  
P. O. Box 1995  
Vancouver, Washington 98668

The Department of Ecology, having received an application from the City of Vancouver requesting approval of the pretreatment program application and the authority to administer a permit program for the discharge of industrial and commercial waste into its sewerage system as provided for by RCW 90.48.160, and the said City having described in connection therewith its capabilities to perform such function to the satisfaction of the Department, now therefore, pursuant to RCW 90.48.165 and Chapter 173-208, Washington Administrative Code;

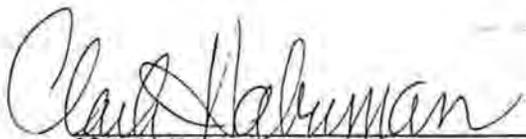
IT IS ORDERED THAT The City of Vancouver be and is hereby given the approval for the pretreatment program and the authority within the geographic and service areas comprising the said City to perform those functions and duties of Chapter 90.48 RCW, Chapter 173-208 WAC, and Chapter 173-216 WAC relating to industrial and commercial waste discharges into its sewerage system subject to the following terms and conditions:

1. During the term of this assumption of permit-issuing authority, which shall be perpetual unless revoked pursuant to WAC 173-208-100, the City of Vancouver shall consistently maintain the effluent limitations for its discharges as set forth in its National Pollutant Discharge Elimination System (NPDES) permits. The City of Vancouver shall require industrial and commercial users of its sewer system to provide pretreatment in accordance with the City of Vancouver Ordinance No. 14.10 and federal pretreatment regulations, or applicable state pretreatment regulations if the latter are more stringent.
2. The City of Vancouver shall maintain an adequate budget to assure sufficient personnel and funding to satisfactorily administer the permit program herein authorized and shall notify the Department at the beginning of each fiscal year of the amount of funding committed to the administration of the permit program.

City of Vancouver  
Order No. DE 87-S188  
Page 2

3. City of Vancouver ordinance No. 14.10 shall be strictly adhered to by the City in the administration of the permit program. Said ordinance is by this reference incorporated herein and made a part of these terms and conditions as if fully set out herein. Any amendments or changes to said ordinance required by the Department to comply with amendments of state or federal water pollution control laws shall be promptly enacted. The City of Vancouver shall notify and obtain prior approval from the Department for any proposed changes in said resolution initiated by it.
4. The City of Vancouver shall fulfill all requirements of WAC 173-208-110 relating to program review in a timely manner.
5. The City of Vancouver shall fulfill all the requirements of WAC 173-216 relating to the permit program.

DATED this 30th day of September, 1987  
at Olympia, Washington.



Clark Haberman  
Regional Manager  
Department of Ecology  
State of Washington

Issuance Date: August 29, 2001  
Effective Date: September 1, 2001  
Expiration Date: August 1, 2006  
Modification Date: January 20, 2004

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM  
WASTE DISCHARGE PERMIT NO. WA0024350

State of Washington  
DEPARTMENT OF ECOLOGY  
Olympia, Washington 98504-8711

In compliance with the provisions of  
The State of Washington Water Pollution Control Law  
Chapter 90.48 Revised Code of Washington  
and  
The Federal Water Pollution Control Act  
(The Clean Water Act)  
Title 33 United States Code, Section 1251 et seq.

**City of Vancouver and Hazel Dell Sewer District**  
**Westside Wastewater Treatment Facility**  
**Post Office Box 1995**  
**Vancouver, WA 98668-1995**

Plant Location: 1800 West Kotobuki Way,  
Vancouver, WA 98660

Receiving Water: Columbia River,  
River Mile 105

Water Body I.D. No.: WA-CR-1010

Discharge Location:  
Latitude: 45° 38' 10" N  
Longitude: 122° 41' 45" W

Plant Type: Municipal Secondary Activated  
Sludge, Nitrification, UV Disinfection

is authorized to discharge in accordance with the special and general conditions that follow.

---

Kelly Susewind, P.E., P.G.  
Southwest Region Manager  
Water Quality Program  
Washington State Department of Ecology

**TABLE OF CONTENTS**

	<u>Page</u>
SUMMARY OF PERMIT REPORT SUBMITTALS .....	4
<b>SPECIAL CONDITIONS</b>	
S1. DISCHARGE LIMITATIONS .....	5
A. Effluent Limitations	
S2. MONITORING REQUIREMENTS .....	6
A. Monitoring Schedule	
B. Sampling and Analytical Procedures	
C. Flow Measurement	
D. Laboratory Accreditation	
S3. REPORTING AND RECORDKEEPING REQUIREMENTS .....	8
A. Reporting	
B. Records Retention	
C. Recording of Results	
D. Additional Monitoring by the Permittee	
E. Noncompliance Notification	
S4. FACILITY LOADING .....	9
A. Design Criteria	
B. Plans for Maintaining Adequate Capacity	
C. Notification of New or Altered Sources	
D. Infiltration and Inflow Evaluation	
E. Flow and Waste Load Assessment	
S5. OPERATION AND MAINTENANCE .....	11
A. Certified Operator	
B. O & M Program	
C. Short-term Reduction	
D. Electrical Power Failure	
E. Prevent Connection of Inflow	
F. Bypass Procedures	
G. Operations and Maintenance Manual	
S6. PRETREATMENT .....	14
A. General Requirements	
B. Monitoring Requirements	
C. Reporting of Monitoring Results	
D. Local Limit Development	
S7. RESIDUAL SOLIDS .....	20
S8. RECEIVING WATER STUDY .....	20

**TABLE OF CONTENTS (cont.)**

	<u>Page</u>
S9. ACUTE TOXICITY .....	21
A. Effluent Characterization	
B. Effluent Limit for Acute Toxicity	
C. Monitoring for Compliance With an Effluent Limit for Acute Toxicity	
D. Response to Noncompliance With an Effluent Limit for Acute Toxicity	
E. Monitoring When There Is No Permit Limit for Acute Toxicity	
F. Sampling and Reporting Requirements	
S10. CHRONIC TOXICITY .....	25
A. Effluent Characterization	
B. Effluent Limit for Chronic Toxicity	
C. Monitoring for Compliance With an Effluent Limit for Chronic Toxicity	
D. Response to Noncompliance With an Effluent Limit for Chronic Toxicity	
E. Monitoring When There Is No Permit Limit for Chronic Toxicity	
F. Sampling and Reporting Requirements	
S11. OUTFALL EVALUATION .....	29
S12. EFFLUENT MIXING STUDY .....	29
A. General Requirements	
B. Reporting Requirements	
C. Protocols	

**GENERAL CONDITIONS**

G1. SIGNATORY REQUIREMENTS.....	31
G2. RIGHT OF ENTRY .....	31
G3. PERMIT ACTIONS .....	32
G4. REPORTING A CAUSE FOR MODIFICATION .....	32
G5. PLAN REVIEW REQUIRED .....	32
G6. COMPLIANCE WITH OTHER LAWS AND STATUTES .....	32
G7. DUTY TO REAPPLY .....	33
G8. REMOVED SUBSTANCES .....	33
G9. TOXIC POLLUTANTS.....	33
G10. OTHER REQUIREMENTS OF 40 CFR.....	33
G11. ADDITIONAL MONITORING .....	33
G12. PAYMENT OF FEES.....	33
G13. PENALTIES FOR VIOLATING PERMIT CONDITIONS.....	33

**SUMMARY OF PERMIT REPORT SUBMITTALS**

Refer to the Special and General Conditions of this permit for additional submittal requirements.

<b>Permit Section</b>	<b>Submittal</b>	<b>Frequency</b>	<b>First Submittal Date</b>
S3.	Discharge Monitoring Report	Monthly	
S3.E	Report of Noncompliance	As Needed	See S3.E
S4.B	Notice of reaching 85% of Design Capacity	As Needed	See S4.B
S4.B	Plans for Maintaining Adequate Capacity	As Needed	180 days after Notice (above)
S4.C	Notice of New SIU (Whose Loading Exceeds Available Capacity)	As Needed	See S4.C
S4.D	Inflow and Infiltration Evaluation	Annually	May 15, 2002
S4.E	Flow and Waste Load Assessment	Annually	May 15, 2002
S5.C	Notice of Reduction in Treatment	As Needed	See S5.C
S5.F	Bypass Notification	As Needed	See S5.F
S6.A.5.	Annual Pretreatment Report	1/year	September 30, 2001
S6.C	Quarterly Pretreatment Monitoring Report	Quarterly	Oct 15, 2001
S8.B	Receiving Water Monitoring Quality Assurance Project Plan (QAPP)	Once	See S8
S8.C	Receiving Water Monitoring Results	Once	With application for permit renewal
S9.A	Initial Acute Toxicity Characterization Data and Summary Report	1/permit cycle	See S9.A
S9.C	Ongoing Monitoring for Acute Toxicity Limits	As Needed	See S9.C
S9.E	Periodic Acute Toxicity Characterization Data and Summary Report	1/permit cycle	February 1, 2006
S10.A	Initial Acute Toxicity Characterization Data and Summary Report	1/permit cycle	See S10.A
S10.C	Ongoing Monitoring for Acute Toxicity Limits	As Needed	See S10.C
S10.E	Periodic Chronic Toxicity Characterization Data and Summary Report	1/permit cycle	February 1, 2006
S11.	Outfall Evaluation	Every 2 years	May 15, 2003
S12.	Effluent Mixing Study	1/permit cycle	February 1, 2006
G7.	Application for permit renewal	1/permit cycle	February 1, 2006

**SPECIAL CONDITIONS**

**S1. DISCHARGE LIMITATIONS**

A. Effluent Limitations for Westside 2000 System:

All discharges and activities authorized by this permit shall be consistent with the terms and conditions of this permit. The discharge of any of the following pollutants more frequently than, or at a concentration in excess of, that authorized by this permit shall constitute a violation of the terms and conditions of this permit. The following limits shall apply to all wastewater discharges from the Permitted facility:

Parameter	EFFLUENT LIMITATIONS <sup>a</sup> : OUTFALL # 1	
	Average Monthly	Average Weekly
Biochemical Oxygen Demand (5 day)	30 mg/L and 7,071 lbs/day and at least 85% removal <sup>b</sup> .	45 mg/L and 10,606 lbs/day
Total Suspended Solids	30 mg/L and 7,071 lbs/day and at least 85% removal <sup>b</sup> .	45 mg/l and 10,606 lbs/day
Fecal Coliform Bacteria	200/100 mL	400/100 mL
pH <sup>c</sup>	Daily minimum is equal to or greater than 6 and the daily maximum is less than or equal to 9.	

<sup>a</sup>The average monthly and weekly effluent limitations are based on the arithmetic mean of the samples taken with the exception of fecal coliform, which is based on the geometric mean.

<sup>b</sup>85% removal shall limit the discharge of BOD5 and Total Suspended Solids (TSS) to 15 percent of the difference between the total monthly headworks loadings and the loadings reintroduced from the Marine Park facility over the same period. Samples may be collected as in April and May 2000 to determine Marine Park loadings. Alternatively, monthly loadings reintroduced from the Marine Park facility may be presumed to be 90% of the total Marine Park influent loading for TSS and 70% of the Marine Park influent loading for BOD5.

<sup>c</sup>Indicates the range of permitted values. When pH is continuously monitored, excursions between 5.0 and 6.0, or 9.0 and 10.0 shall not be considered violations provided no single excursion exceeds 60 minutes in length and total excursions do not exceed 7 hours and 30 minutes per month. Any excursions below 5.0 and above 10.0 are violations and will be circled and explained on the Discharge Monitoring Report. The instantaneous maximum and minimum pH shall be reported monthly.

C. Mixing Zone Descriptions:

1. Chronic Mixing Zone: The maximum boundaries of the mixing zone outside of which exceedance of chronic and human health criteria is prohibited extends 317 feet downstream from the most upstream discharge port, 100 feet upstream from this port, and from the near shore to the diffuser and 317 feet beyond towards the opposite bank.

2. Acute Mixing Zone: The maximum boundaries of the mixing zone outside of which exceedance of acute criteria is prohibited extends 31.7 feet downstream from the most downstream port, 10.0 feet upstream from the most upstream discharge port, and 31.7 feet from the diffuser towards both the near and far banks.

**S2. MONITORING REQUIREMENTS**

A. Monitoring Schedule:

Category	Parameter	Units	Sample Point	Minimum Sampling Frequency	Sample Type
Wastewater Influent	BOD <sub>5</sub>	mg/L	Headworks	5 days/week	Composite
Wastewater Influent	TSS	mg/L	Headworks	5 days/week	Composite
Wastewater Influent	pH	Standard Units	Headworks	7 days/week	Grab/meter
Wastewater Effluent	Flow	MGD	Effluent weir	Continuous	On-line
Wastewater Effluent	BOD <sub>5</sub>	mg/L lbs/day	Final Effluent	5 days/week	Composite
Wastewater Effluent	TSS	mg/L lbs/day	Final Effluent	5 days/week	Composite
Wastewater Effluent	Fecal Coliform	Colonies	Final Effluent	7 days/week	Grab
Wastewater Effluent	Total Ammonia (as N)	mg/L	Final Effluent	5 days/week	Grab
Wastewater Effluent	Temperature	Degrees C	Final Effluent	7 days/week	Grab/meter
Wastewater Effluent	pH	Standard Units	Effluent weir	7 days/week	Grab/meter
Ambient Conditions	Rainfall	Inches	Nearby gauge	7 days/week	24-hr total
Industrial Pretreatment Lagoon	Flow	MGD	Influent and Effluent	Continuous	On-Line
Industrial Pretreatment Lagoon	TSS	mg/L	Influent and Effluent	3 days / week	24-hour composite
Industrial	BOD	mg/L	Influent and	3 days/ week	24-hour

Category	Parameter	Units	Sample Point	Minimum Sampling Frequency	Sample Type
Pretreatment Lagoon			Effluent		composite
Industrial Pretreatment Lagoon	pH	Standard Units	Influent and Effluent	7 days / week	grab/meter
Marine Park <sup>1</sup>	Solids return to WSTP	lb	Return line	Daily or presume 90% of influent.	Composite
Marine Park <sup>1</sup>	BOD5 to WSTP	lb	Return line	Daily or presume 70% of influent.	Composite

Note 1 – Daily sampling of the BOD<sub>5</sub> and TSS concentrations and recording flow volumes for streams reintroduced from the Marine Park facility to the Westside Interceptor is optional. If this sampling is performed it must be reported and used to calculate 85 percent removal at this facility. If this sampling is not done, loadings reintroduced to this facility must be presumed to equal 90 percent of influent TSS and 70 percent of influent BOD<sub>5</sub> loadings reported in the Marine Park Discharge Monitoring Report for the month.

**B. Sampling and Analytical Procedures:**

Samples and measurements taken to meet the requirements of this permit shall be representative of the volume and nature of the monitored parameters, including representative sampling of any unusual discharge or discharge condition. Unusual discharges include bypasses, upsets, and maintenance-related conditions affecting effluent quality and any visibly different effluent.

Where specific sampling and analytical methods are not identified, sampling and analytical methods used to meet the water and wastewater monitoring requirements specified in this permit shall conform to the latest revision of the *Guidelines Establishing Test Procedures for the Analysis of Pollutants* contained in 40 CFR Part 136, to methods for which special approval has been granted, or where such methods do not exist, or would not be appropriate, to the latest revision of *Standard Methods for the Examination of Water and Wastewater* (APHA). This general requirement shall be superceded by any written approval by the Department to use an alternate method for determining compliance with this permit.

**C. Flow Measurement:**

Appropriate flow measurement devices and methods consistent with accepted scientific practices shall be selected and used to ensure the accuracy and reliability of measurements of the quantity of monitored flows. The devices shall be installed, calibrated, and maintained to ensure that the accuracy of the measurements are consistent with the accepted industry standard for that type of device. Frequency of calibration shall be in conformance with manufacturer's recommendations and at a minimum frequency of at least one calibration per year. The Permittee shall include the date of the last calibration on the discharge monitoring report. The Permittee shall maintain calibration records for at least three years.

D. Laboratory Accreditation:

All monitoring data required by the Department shall be prepared by a laboratory registered or accredited under the provisions of, *Accreditation of Environmental Laboratories*, Chapter 173-50 WAC. Flow, temperature, settleable solids, conductivity, pH, and internal process control parameters are exempt from this requirement. Conductivity and pH shall be accredited if the laboratory must otherwise be registered or accredited. Crops, soils and hazardous waste data are exempted from this requirement pending accreditation of laboratories for analysis of these media by the Department.

**S3. REPORTING AND RECORDKEEPING REQUIREMENTS**

The Permittee shall monitor and report in accordance with the following conditions. The falsification of information submitted to the Department shall constitute a violation of the terms and conditions of this permit.

A. Reporting:

The first monitoring period begins on the effective date of the permit. Monitoring results shall be submitted monthly. Monitoring data obtained during the previous month shall be summarized and reported on a form provided by or otherwise approved by the Department. The Permittee shall ensure that the Department receives this form no later than the 15th day of the month following the completed monitoring period unless otherwise specified in this permit. Data required by the "Pretreatment" section of S6.B shall be submitted no later than 45 days following the monitoring period and data for an entire calendar year shall be included in each annual report. The Permittee shall send the report(s) to the Department of Ecology, Southwest Regional Office, P.O. Box 47775, Olympia, Washington 98504-7775.

All lab reports providing data for organic and metal parameters shall include the following information: sampling date, sample location, date of analysis, parameter name, CAS number, analytical method/ number, method detection limit (MDL), lab practical quantitation limit (PQL), reporting units and concentration detected.

B. Records Retention:

The Permittee shall retain records of all monitoring information for a minimum of three years. Such information shall include all calibration and maintenance records and all original recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the Permittee or when requested by the Director.

Modification Date: January 20, 2004

C. Recording of Results:

For each measurement or sample taken, the Permittee shall record the following information: (1) the date, exact place, method, and time of sampling; (2) the individual who performed the sampling or measurement; (3) the dates the analyses were performed; (4) who performed the analyses; (5) the analytical techniques or methods used; and (6) the results of all analyses.

D. Additional Monitoring by the Permittee:

If the Permittee monitors any pollutant more frequently than required by this permit using test procedures either specified by Condition S2 or approved by 40 CFR part 136 for the examination of wastewater, then the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Permittee's self-monitoring reports.

E. Noncompliance Notification:

In the event the Permittee is unable to comply with any of the permit terms and conditions due to any cause, the Permittee shall:

1. Immediately take action to stop, contain, and cleanup unauthorized discharges or otherwise stop the violation, and correct the problem;
2. Repeat sampling and analysis of any violation and submit the results to the Department within 30 days after becoming aware of the violation;
3. Immediately notify the Department of the failure to comply; and
4. Submit a detailed written report to the Department within thirty days (five days for upsets and bypasses), unless requested earlier by the Department. The report should describe the nature of the violation, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of the resampling, and any other pertinent information.

Compliance with these requirements does not relieve the Permittee from responsibility to maintain continuous compliance with the terms and conditions of this permit or the resulting liability for failure to comply.

**S4. FACILITY LOADING**

A. Design Criteria:

Flows and waste loadings limits of the previous permit are not applicable as components have been modified and new components added as part of the facility upgrade. The facility has completed modifications both to provide nitrification capabilities and increase the POTW's organic and hydraulic capacity. The criteria below correspond to: Engineering Report, Westside 2000, Wastewater Treatment Plant Improvements, 12/95 as approved 4/23/96. The new Westside 2000 and Industrial Pretreatment Lagoon Design Capacities shall not be exceeded during the term of this permit:

<u>Westside Treatment Plant</u>	<u>Westside 2000</u>
Average flow for the maximum month:	28.26 MGD
BOD <sub>5</sub> loading for maximum month:	49,525 lbs/day
TSS loading for maximum month:	74,289 lbs/day

<u>Industrial Pretreatment Lagoon</u>	<u>Design Capacity</u>
Average flow for the maximum month:	3.2 MGD
BOD influent loading for average month:	31,000 lbs/day
TSS influent loading for average month:	20,000 lbs/day

B. Plans for Maintaining Adequate Capacity:

When the actual flow or wasteload reaches 85 percent of any one design criteria for the Westside 2000 or pretreatment lagoon listed in S4.A for three consecutive months, or when the projected increases in flow or loadings would reach design capacity within five years, whichever occurs first, the Permittee shall include notice with the next monthly monitoring report that plans for maintaining adequate capacity are being developed. The Permittee shall submit to the Department, within 180 days following this notice, a plan and a schedule for continuing to maintain capacity at the facility sufficient to achieve the effluent limitations and other conditions of this permit. This plan shall address any of the following actions or any others necessary to meet this objective.

1. Analysis of the present design including the introduction of any process modifications that would establish the ability of the existing facility to achieve the effluent limits and other requirements of this permit at specific levels in excess of the existing design criteria specified in paragraph A above.
2. Reduction or elimination of excessive infiltration and inflow of uncontaminated ground and surface water into the sewer system.
3. Limitation on future sewer extensions or connections or additional wasteloads.
4. Modification or expansion of facilities necessary to accommodate increased flow or wasteload.
5. Reduction of industrial or commercial flows or waste loads to allow for increasing sanitary flow or wasteload.

Engineering documents associated with the plan must meet the requirements of WAC 173-240-060, "Engineering Report," and be approved by the Department prior to any construction. The plan shall specify any contracts, ordinances, methods for financing, or other arrangements necessary to achieve this objective.

C. Notification of New or Altered Sources:

The Permittee shall submit written notice to the Department whenever any new discharge or increase in volume or change in character of an existing discharge into the sewer is proposed which would interfere with the operation of, or exceed the hydraulic or organic design capacity of any portion of the collection or treatment system. This notice shall include an evaluation of the system's ability to adequately transport and treat the added flow and/or wasteload, and the Permittee's proposed response to the request.

D. Infiltration and Inflow Evaluation:

1. The Permittee shall conduct an infiltration and inflow evaluation. Refer to the U.S.EPA publication, *I/I Analysis and Project Certification*, available as Publication No. 97-03 at: Publications Office, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600. Plant monitoring records may be used to assess measurable infiltration and inflow.
2. A report shall be prepared which summarizes any measurable infiltration and inflow. If infiltration and inflow have increased by more than 15 percent from that found in the first report based on equivalent rainfall, the report shall contain a plan and a schedule for: (1) locating the sources of infiltration and inflow; and (2) correcting the problem.
3. The report shall be submitted by May 15, 2002, and annually thereafter.

E. Flow and Waste Load Assessment:

The Permittee shall conduct an annual assessment of their flow and waste load and submit a report to the Department by May 15, 2002, and annually thereafter. The report shall contain the following:

1. A summary of any noncompliance with the permit effluent limitations and whether the noncompliance was related to the system's capacity;
2. A comparison between the existing and design monthly average dry weather and wet weather flows, peak flows, BOD, and total suspended solids loadings, and the percentage increase in these parameters since the last annual report;
3. The present and design population or population equivalent, and projected population growth rate; and
4. The estimated date upon which the design capacity is projected to be reached according to the most restrictive of these parameters.
5. For requirements 2-4 of this section, the Permittee shall present data and projections for both this facility separately and for the system of flows and loadings to this facility and the Marine Park Water Reclamation Facility taken together as a system.

**S5. OPERATION AND MAINTENANCE**

The Permittee shall at all times be responsible for the proper operation and maintenance of any facilities or systems of control installed to achieve compliance with the terms and conditions of the permit.

A. Certified Operator:

An operator certified for a Class 4 plant by the state of Washington shall be in responsible charge of the day-to-day operation of the wastewater treatment plant. An operator certified for at least a Class 3 plant shall be in charge during all regularly scheduled shifts.

B. O & M Program:

The Permittee shall institute an adequate operation and maintenance program for their entire sewage system. The Permittee shall act promptly to comply with the requirements of WAC 173-240-050 with respect to submitting and maintaining an Operation and Maintenance (O&M) Manual for the Westside 2000 facility and the industrial pretreatment lagoon. Chemicals and adjuncts shall not be used except in accordance with approved O&M Manuals. Maintenance records shall be maintained on all major electrical and mechanical components of the treatment plant, as well as the sewage system and pumping stations. Such records shall clearly specify the frequency and type of maintenance recommended by the manufacturer and shall show the frequency and type of maintenance performed. These maintenance records shall be available for inspection at all times.

C. Short-term Reduction:

If the Permittee contemplates a reduction in the level of treatment that would cause a violation of permit discharge limitations on a short-term basis for any reason, and such reduction cannot be avoided, the Permittee shall give written notification to the Department, if possible, 30 days prior to such activities. This notice shall identify the reasons for, length of time of, and the potential effects of the reduced level of treatment. This notification does not relieve the Permittee of their obligations under this permit.

D. Electrical Power Failure:

The Permittee is responsible for maintaining adequate safeguards to prevent the discharge of untreated wastes or wastes not treated in accordance with the requirements of this permit during electrical power failure at the treatment plant and/or sewage lift stations. This may be accomplished either by means of alternate power sources, standby generator, or retention of inadequately treated wastes. The Permittee shall maintain Reliability Class 2 (EPA 430-99-74-001) at the wastewater treatment plant, which requires primary sedimentation and disinfection.

E. Prevent Connection of Inflow:

The Permittee shall strictly enforce their sewer ordinances and not allow the connection of inflow (roof drains, foundation drains, etc.) to the sanitary sewer system.

F. Bypass Procedures:

The Permittee shall immediately notify the Department of any spill, overflow, or bypass from any portion of the collection or treatment system.

The bypass of wastes from any portion of the treatment system is prohibited unless one of the following conditions (1, 2, or 3) applies:

1. Unavoidable Bypass -- Bypass is unavoidable to prevent loss of life, personal injury, or severe property damage. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which would cause them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass.

If the resulting bypass from any portion of the treatment system results in noncompliance with this permit the Permittee shall notify the Department in accordance with Condition S3.E "Noncompliance Notification."

2. Anticipated Bypass That Has The Potential to Violate Permit Limits or Conditions -- Bypass is authorized by an administrative order issued by the Department. The Permittee shall notify the Department at least 30 days before the planned date of bypass. The notice shall contain (1) a description of the bypass and its cause; (2) an analysis of all known alternatives which would eliminate, reduce, or mitigate the need for bypassing; (3) a cost-effectiveness analysis of alternatives including comparative resource damage assessment; (4) the minimum and maximum duration of bypass under each alternative; (5) a recommendation as to the preferred alternative for conducting the bypass; (6) the projected date of bypass initiation; (7) a statement of compliance with State Environmental Policy Act (SEPA); (8) if a water quality criteria exceedance is unavoidable, a request for modification of water quality standards as provided for in WAC 173-201A-110, and (9) steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass.

For probable construction bypasses, the need to bypass is to be identified as early in the planning process as possible. The analysis required above shall be considered during preparation of the engineering report or facilities plan and plans and specifications and shall be included to the extent practical. In cases where the probable need to bypass is determined early, continued analysis is necessary up to and including the construction period in an effort to minimize or eliminate the bypass.

The Department will consider the following prior to issuing an administrative order:

- a. If the bypass is necessary to perform construction or maintenance-related activities essential to meet the requirements of the permit.
- b. If there are feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, maintenance during normal periods of equipment down time, or transport of untreated wastes to another treatment facility.
- c. If the bypass is planned and scheduled to minimize adverse effects on the public and the environment.

After consideration of the above and the adverse effects of the proposed bypass and any other relevant factors, the Department will approve or deny the request. The public shall be notified and given an opportunity to comment on bypass incidents of significant duration, to the extent feasible. Approval of a request to bypass will be by administrative order issued by the Department under RCW 90.48.120.

3. Bypass For Essential Maintenance Without the Potential to Cause Violation of Permit Limits or Conditions -- Bypass is authorized if it is for essential maintenance and does not have the potential to cause violations of limitations or other conditions of the permit, or adversely impact public health as determined by the Department prior to the bypass.

G. Operations and Maintenance Manual:

The approved Operations and Maintenance Manual shall be kept available at the treatment plant and all operators shall follow the instructions and procedures of this Manual. The O&M Manual shall be reviewed annually and updated as necessary.

**S6. PRETREATMENT**

A. General Requirements:

1. The Permittee shall implement the Industrial Pretreatment Program in accordance with the legal authorities, policies, procedures, and financial provisions described in the Permittee's approved pretreatment program submittal entitled "Industrial Pretreatment Program" and dated August, 1987; any approved revisions thereto; the City's Pretreatment Ordinance, Chapter 14.10 VMC; and the General Pretreatment Regulations (40 CFR Part 403). At a minimum, the Permittee shall conduct the following pretreatment implementation activities:
  - a. Apply and enforce Pretreatment Standards including: Categorical pretreatment standards promulgated pursuant to Section 307(b) and (c) of the Federal Clean Water Act (hereinafter, the Act); prohibited discharge standards as set forth in 40 CFR 403.5 and Chapter 173-216 WAC; local limitations specified in Section 040 of Vancouver Municipal Code Chapter 14.10, (10/21/96 version); and state standards. The Permittee shall apply the most stringent of all applicable standards at the time of issuance or modification of a local industrial waste discharge permit. Locally derived limitations shall be defined as pretreatment standards under Section 307(d) of the Act and shall not be limited to categorical industrial facilities.
  - b. Issue industrial waste discharge permits to all significant industrial users [Significant Industrial Users (SIU), as defined in 40 CFR 403.3(t)] contributing to the treatment works, including those from other jurisdictions. Industrial waste discharge permits shall contain as a minimum, all the requirements of 40 CFR 403.8 (f)(1)(iii). The Permittee shall coordinate the permitting process with the Department regarding any industrial facility, which may possess a state waste discharge permit issued by the Department. Once issued, an industrial waste discharge permit will supercede the conditions of a state-issued waste discharge permit relating to discharges to the POTW.
  - c. Maintain and update, as necessary, records identifying the nature, character, and volume of pollutants contributed by industrial users to the POTW. Records shall be maintained for at least a three-year period.

- d. Perform inspections, surveillance, and monitoring activities on industrial users to determine and/or confirm compliance with applicable pretreatment standards and requirements. A thorough inspection of SIUs shall be conducted annually. Frequency of regular local monitoring of SIU wastewaters shall normally be commensurate with the character and volume of the wastewater but shall not be less than once per year. Sample collection and analysis shall be performed in accordance with 40 CFR Part 403.12.
  - e. Enforce and obtain remedies for noncompliance by any industrial users with applicable pretreatment standards and requirements. Once violations have been identified, the Permittee shall take timely and appropriate enforcement action to address the noncompliance. The Permittee's action shall follow its enforcement response procedures and any amendments, thereof.
  - f. Publish, at least annually in the largest daily newspaper in the Permittee's service area, a list of all nondomestic users which, at any time in the previous 12 months, were in significant noncompliance as defined in 40 CFR 403.8(f)(2)(vii).
  - g. If the Permittee elects to conduct sampling of a SIU's discharge in lieu of the user self-monitoring, it shall sample and analyze for all regulated pollutants in accordance with 40 CFR Part 403.12. The character and volume of the samples shall be representative of the discharge and shall provide adequate data to determine compliance, but in no case should sampling occur less than two times per year.
  - h. Develop and maintain a data management system designed to track the status of the Permittee's industrial user inventory, industrial user discharge characteristics, and compliance status.
  - i. Maintain adequate staff, funds, and equipment to implement its pretreatment program.
  - j. Establish, where necessary, contracts or legally binding agreements with contributing jurisdictions to ensure compliance with applicable pretreatment requirements by commercial or industrial users within these jurisdictions. These contracts or agreements shall identify the agency responsible for the various implementation and enforcement activities to be performed in the contributing jurisdiction. In addition, the Permittee shall be required to develop a Memorandum of Understanding (or Interlocal Agreement) that outlines the specific roles, responsibilities and pretreatment activities of each jurisdiction.
2. The Permittee shall implement the Slug Discharge Control Program described in the approved Industrial Pretreatment Program and modifications submitted on September 28, 1993.

3. The Permittee shall evaluate, at least once every two years, whether each SIU needs a plan to control slug discharges. For purposes of this subsection, a slug discharge is any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or non-customary batch discharge. The results of such activities shall be available to the Department upon request. If the Permittee decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:
  - a. Description of discharge practices, including nonroutine batch discharges.
  - b. Description of stored chemicals.
  - c. Procedures for immediately notifying the Permittee of slug discharges, including any discharge that would violate a prohibition under 40 CFR 403.5(b), with procedures for follow-up written notification within five days.
  - d. If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment necessary for emergency response.
4. Whenever it has been determined, on the basis of information provided to or obtained by the Department, that any waste source contributes pollutants to the Permittee's treatment works in violation of Subsection (b), (c), or (d) of Section 307 of the Act, and the Permittee has not taken adequate corrective action, the Department shall notify the Permittee of this determination. Failure by the Permittee to commence an appropriate enforcement action within 30 days of this notification may result in appropriate enforcement action by the Department against the source and/or the Permittee.
5. Pretreatment Report:

The Permittee shall provide to the Department an annual report that briefly describes its program activities during the previous 12-month period ending August 15 of each year. This report shall be submitted no later than September 30 of each year to: Washington Department of Ecology, Southwest Regional Office, P.O. Box 47775, Olympia, Washington 98504-7775.

The report shall include the following information:

  - a. An updated industrial user survey, including the names and addresses of all users subject to pretreatment standards or requirements. The list shall identify the user's categorization, and the standards applied, (categorical standards, local limits, or both). Deletions from the previous year's list shall be shown in strikeout, and additions shall be underlined. A brief explanation shall accompany each deletion.

- b. Results of wastewater sampling at the treatment plant as specified in S2. The Permittee shall calculate removal rates for each pollutant and evaluate the adequacy of the existing local limitations in VMC 14.10.040 in preventing treatment plant interference, pass through of pollutants that could affect receiving water quality, and sludge contamination.
- c. Status of program implementation, including:
  - 1) A summary of program modifications requested during the reporting period. Include the approval and implementation status of any substantial modifications and any changes to staffing and funding levels.
  - 2) Any interference, upset, or permit violations experienced at the POTW that are directly attributable to wastes from industrial users.
  - 3) Listing of industrial users inspected and/or monitored, and a summary of the results.
  - 4) Listing of industrial users scheduled for inspection and/or monitoring for the next year, and expected frequencies.
  - 5) Listing of industrial users notified of promulgated pretreatment standards and/or local standards as required in 40 CFR 403.8(f)(2)(iii). Indicate which industrial users are on compliance schedules and the final date of compliance for each.
  - 6) Listing of industrial users issued industrial waste discharge permits.
  - 7) Planned changes in the pretreatment program implementation plan. (See subsection A.6. below.)
- d. Status of compliance activities, including:
  - 1) Listing of industrial users that failed to submit baseline monitoring reports or any other reports required under 40 CFR 403.12 and in Chapter 6, Volume 1 of the Permittee's pretreatment program, dated August 1987.
  - 2) Listing of industrial users that were at any time during the reporting period not complying with federal, state, or local pretreatment standards or with applicable compliance schedules for achieving those standards, and the duration of such noncompliance.
  - 3) Summary of enforcement activities and other corrective actions taken or planned against noncomplying industrial users. The Permittee shall supply to the Department a copy of the public notice of facilities that were in significant noncompliance.

6. The Permittee is no longer responsible for complying with the terms of the 1987 Memorandum of Understanding between the City of Vancouver and Ecology (appendix S of approved program) for submittal of draft and final permits to Ecology for review. The Permittee must ensure that SIU's obtain approval of plans required by Chapter 173-240 WAC as detailed in the City's approved procedures.
7. The Permittee shall request and obtain approval from the Department prior to implementing any significant changes to the local pretreatment program as approved. The Permittee shall follow the procedures of 40 CFR 403.18 (as amended July 1997) with respect to all program modifications.

**B. Monitoring Requirements:**

The Permittee shall monitor its influent and effluent for the pollutants listed below:

<b>Parameters</b>	<b>Units</b>	<b>Sample Point</b>	<b>Minimum Sample Frequency</b>	<b>Sample Type</b>
Metals, phenol & cyanide <sup>1</sup>	mg/L	Influent and effluent <sup>2</sup>	Quarterly	24-hour composite <sup>3,9</sup>
All Other Toxic Pollutants <sup>4,5,6,7</sup>	mg/L	Influent and effluent <sup>2</sup>	Annually	composite of at least 4 grab samples <sup>3</sup>
Metals, phenol & cyanide <sup>1</sup>	mg/kg (dry wt)	Sludge	Quarterly	composite of at least 4 grab samples <sup>8</sup> .
All Other Toxic Pollutants <sup>4,5,6,7</sup>	mg/kg (dry wt)	Sludge	Annual	composite of at least 4 grab samples <sup>8</sup> .
Sludge Volume Removed	Gal/day & % moisture	Sludge	Annual	Average of quarterly data
Arsenic (inorganic)	ug/l	effluent	twice in last year of permit	Grab, clean (EPA method 1669)
Mercury (clean sample)	mg/L	effluent	Semi-Annually	Grab, clean (EPA method 1669)

Footnotes:

<sup>1</sup> "Metals" for this sections include the following metals: Antimony, Arsenic, Beryllium, Cadmium, Chromium, Copper, Lead, Mercury, Nickel, Selenium, Silver, Thallium, and Zinc (total metals concentrations shall be reported for each). Monitoring shall also include Cyanide (total), and Phenols (total).

<sup>2</sup> The POTW influent and effluent shall be sampled on a day when industrial discharges are occurring at normal to maximum levels.

<sup>3</sup> Samples for the analysis of acid and base/neutral extractable compounds and metals shall be 24-hour composites. Samples for the analysis of volatile organic compounds shall be collected using grab sampling techniques at equal intervals for the total of four grab samples per day. Cyanide, phenols, and oils shall be taken as grab samples. Oils shall be hexane soluble or equivalent.

<sup>4</sup> “All other toxic pollutants” shall mean all pollutants listed in Table II of 40 CFR 122 appendix D, as well as the following pollutants: Phosphorus, Sulfate, Sulfide, Sulfite, Chloride, Fluoride, Boron, Molybdenum, Oil & Grease, Nitrate, Nitrite, Total Inorganic Nitrogen, Acetone, Styrene, Iron, Hardness (as CaCO<sub>3</sub>), Salinity, and Total Dissolved Solids.

<sup>5</sup> Upon written notification by the Department the Permittee shall include monitoring for any new toxic substances designated pursuant to section 307(a)(1) of the Clean Water Act, as amended.

<sup>6</sup> A single analysis for volatile pollutants (Method 624) may be run for each monitoring day by compositing equal volumes of each grab sample directly in the GC purge and trap apparatus in the laboratory, with no less than 1 ml of each grab included in the composite. Unless otherwise indicated, all reported test data for metals shall represent the total amount of the constituent present in all phases, whether solid, suspended, or dissolved, elemental or combined including all oxidation states.

<sup>7</sup> In addition to quantifying the listed substances, a reasonable attempt should be made to identify all other substances and quantify all pollutants shown to be present by gas chromatograph/mass spectrometer (GC/MS) analysis per 40 CFR 136, Appendix. A, Methods 624 and 625. Determinations of pollutants should be attempted for each fraction which produces identifiable spectra on total ion plots (reconstructed gas chromatograms). Determinations should be attempted from all peaks with responses five percent or greater than the nearest internal standard. The five percent value is based on internal standard concentrations of 30 µg/l, and must be adjusted downward if higher internal standard concentrations are used or adjusted upward if lower internal standard concentrations are used. Non-substituted aliphatic compounds may be expressed as total hydrocarbon content. Identification shall be attempted by a laboratory whose computer data processing programs are capable of comparing sample mass spectra to a computerized library of mass spectra, with visual confirmation by an experienced analyst. For all detected substances which are determined to be pollutants, additional sampling and appropriate testing shall be conducted to determine concentration and variability, and to evaluate trends.

<sup>8</sup> A sludge sample shall be collected concurrent with a wastewater sample and shall be taken as a composite of four samples during a 24-hour period. Samples shall be of the removed solids being returned by force main for further processing at the Westside Treatment Plant. Sampling and analysis shall conform to U.S. EPA Methods 624 and 625 and/or 1624 and 1625 unless the Permittee has received approval to use an alternate method by the Department.

C. Reporting of Monitoring Results:

The Permittee shall submit results of monitoring required under S6.B for each calendar quarter (quarters begin January 1, April 1, July 1, and October 1) by the 15<sup>th</sup> of the month following that quarter, and provide a summary and evaluation of the last four quarters of data in each Annual Pretreatment Report.

D. Local Limit Development:

As sufficient data becomes available, the Permittee shall, in consultation with the Department, reevaluate their local limits in order to prevent pass through or interference.

Upon determination by the Department that any pollutant present causes pass through or interference, or exceeds established sludge standards, the Permittee shall establish new local limits or revise existing local limits as required by 40 CFR 403.5. In addition, the Department may require revision or establishment of local limits for any pollutant discharged from the POTW that has a reasonable potential to exceed the Water Quality Standards, Sediment Standards, or established effluent limits, or causes whole effluent toxicity. The determination by the Department shall be in the form of an Administrative Order.

The Department may modify this permit to incorporate additional requirements relating to the establishment and enforcement of local limits for pollutants of concern. Any permit modification is subject to formal due process procedures pursuant to state and federal law and regulation.

#### **S7. RESIDUAL SOLIDS**

Residual solids include screenings, grit, scum, primary sludge, waste activated sludge and other solid waste. The Permittee shall store and handle all residual solids in such a manner so as to prevent their entry into state ground or surface waters. The Permittee shall not discharge leachate from residual solids to state surface or ground waters.

#### **S8. RECEIVING WATER STUDY**

##### **A. General Requirements:**

The Permittee shall collect receiving water information necessary to periodically assess whether the effluent has a reasonable potential to cause a violation of the water quality standards. The submission of this data is timed to allow the Department to determine whether effluent limits are warranted in the next permit during its development.

The Permittee shall sample and analyze the receiving water for total suspended solids, hardness, temperature (report as profile), flow velocity (graph over 24-hour period), ammonia, orthophosphate, pH, salinity, mercury, and arsenic. The following metals shall be analyzed for both total recoverable and dissolved: zinc, copper, lead, silver, cadmium, nickel, and chromium. For selenium and mercury, the total recoverable shall be determined. For arsenic only, the inorganic form must be determined. The time of sampling shall be as close as possible to the time of critical period. The Permittee shall follow the clean sampling techniques (*Method 1669: Sampling Ambient Water for Trace Metals at EPA Water Quality Criteria Levels*, EPA Publication No. 821-R-95-034, April 1995).

The sampling station accuracy requirements are  $\pm 20$  meters. The receiving water sampling location should be outside the zone of influence of the effluent. At least eight receiving water samples shall be collected on not less than four different days. All chemical analysis shall be conducted according to methods listed in EPA Method 1669 for the analyte. Where other methods can achieve the following minimum detection levels they may be used:

<b>POLLUTANT PARAMETER</b>	<b>DETECTION LIMIT REQUIRED</b>
Copper	1.0 µg/L
Lead	1.0 µg/L
Nickel	1.0 µg/L
Chromium	1.0 µg/L
Zinc	4.0 µg/L
Cadmium	0.1 µg/L
Selenium	2.0 µg/L
Silver	0.2 µg/L
Mercury	0.2 µg/L
Arsenic (Inorganic form only)	.01 µg/L

B. Quality Assurance Requirements:

All sampling and analysis shall be conducted in accordance with the guidelines given in *Guidelines and Specifications for Preparing Quality Assurance Project Plans*, Ecology Publication 91-16. The Permittee shall submit a sampling and quality assurance plan for Department review and approval at least 90 days prior to conducting sampling. Sampling data submitted to meet the requirements of this section shall meet the QA/QC standards of this plan.

C. Reporting Requirements:

The Permittee shall submit the results of the study to the Department within 90 days of completing the effluent and receiving water studies. A compilation of sampling results required by this section shall also be submitted with the next permit application which is due at least 180 days prior to the expiration date of this permit. These results are intended to be used in subsequent permitting actions for both of the City of Vancouver's wastewater treatment facilities, but are not duplicated in the Marine Park permit. Any additional or subsequent sampling and analysis the Permittee wishes to submit for determining reasonable potential shall also meet the quality assurance requirements. The Permittee may conduct a cooperative receiving water study with other NPDES Permittees discharging in the same vicinity.

**S9. ACUTE TOXICITY**

A. Effluent Characterization:

The Permittee shall conduct acute toxicity testing on the final effluent to determine the presence and amount of acute (lethal) toxicity. The three acute toxicity tests listed below shall be conducted on each sample taken for effluent characterization.

Effluent characterization for acute toxicity shall be conducted quarterly for one year. Acute toxicity testing shall follow protocols, monitoring requirements, and quality

assurance/quality control procedures specified in this Section. A dilution series consisting of a minimum of five concentrations and a control shall be used to estimate the concentration lethal to 50 percent of the organisms ( $LC_{50}$ ). The percent survival in 100 percent effluent shall also be reported.

Testing shall begin within 60 days after submission of the effective date of the permit. A written report shall be submitted to the Department within 60 days after the sample date. A final effluent characterization summary report shall be submitted to the Department within 90 days after the last monitoring test results are final. This summary report shall include a tabulated summary of the individual test results and any information on sources of toxicity, toxicity source control, correlation with effluent data, and toxicity treatability which is developed during the period of testing.

Acute toxicity tests shall be conducted with the following species and protocols:

- 1) Fathead minnow, *Pimephales promelas* (96-hour static-renewal test, method: EPA/600/4-90/027F)
- 2) Daphnid, *Ceriodaphnia dubia*, *Daphnia pulex*, or *Daphnia magna* (48-hour static test, method: EPA/600/4-90/027F). The Permittee shall choose one of the three species and use it consistently throughout effluent characterization.
- 3) Rainbow trout, *Oncorhynchus mykiss* (96-hour static-renewal test, method: EPA/600/4-90/027F)

**B. Effluent Limit for Acute Toxicity:**

The Permittee has an effluent limit for acute toxicity if, after completing one year of effluent characterization, either:

1. The median survival of any species in 100 percent effluent is below 80 percent, or
2. Any one test of any species exhibits less than 65 percent survival in 100 percent effluent.

If an effluent limit for acute toxicity is required by subsection B at the end of one year of effluent characterization, the Permittee shall immediately complete all applicable requirements in subsections C, D, and F.

If no effluent limit is required by subsection B at the end of one year of effluent characterization, then the Permittee shall complete all applicable requirements in subsections E and F.

**The effluent limit for acute toxicity is no acute toxicity detected in a test concentration representing the acute critical effluent concentration (ACEC).**

In the event of failure to pass the test described in subsection C of this section for compliance with the effluent limit for acute toxicity, the Permittee is considered to be in compliance with all permit requirements for acute whole effluent toxicity as long as the requirements in subsection D are being met to the satisfaction of the Department.

The ACEC means the maximum concentration of effluent during critical conditions at the boundary of the zone of acute criteria exceedance assigned pursuant to WAC 173-201A-100. The zone of acute criteria exceedance is authorized in Section S1.C of this permit. The ACEC equals 11.1 percent effluent.

If no effluent limit is required by subsection B at the end of one year of effluent characterization, then the Permittee shall stop effluent characterization and begin to conduct the activities in subsection E even if the ACEC is unknown.

C. Monitoring for Compliance With an Effluent Limit for Acute Toxicity:

Monitoring to determine compliance with the effluent limit shall be conducted quarterly for the remainder of the permit term using each of the species listed in subsection A above on a rotating basis and performed using at a minimum 100 percent effluent, the ACEC, and a control. The Permittee shall schedule the toxicity tests in the order listed in the permit unless the Department notifies the Permittee in writing of another species rotation schedule. The percent survival in 100 percent effluent shall be reported for all compliance monitoring.

Compliance with the effluent limit for acute toxicity means no statistically significant difference in survival between the control and the test concentration representing the ACEC. The Permittee shall immediately implement subsection D if any acute toxicity test conducted for compliance monitoring determines a statistically significant difference in survival between the control and the ACEC using hypothesis testing at the 0.05 level of significance (Appendix H, EPA/600/4-89/001). If the difference in survival between the control and the ACEC is less than 10 percent, the hypothesis test shall be conducted at the 0.01 level of significance.

D. Response to Noncompliance With an Effluent Limit for Acute Toxicity:

If the Permittee violates the acute toxicity limit in subsection B, the Permittee shall begin additional compliance monitoring within one week from the time of receiving the test results. This additional monitoring shall be conducted weekly for four consecutive weeks using the same test and species as the failed compliance test. Testing shall determine the LC<sub>50</sub> and effluent limit compliance. The discharger shall return to the original monitoring frequency in subsection C after completion of the additional compliance monitoring.

If the Permittee believes that a test indicating noncompliance will be identified by the Department as an anomalous test result, the Permittee may notify the Department that the compliance test result might be anomalous and that the Permittee intends to take only one additional sample for toxicity testing and wait for notification from the Department before completing the additional monitoring required in this subsection. The notification to the Department shall accompany the report of the compliance test result and identify the reason for considering the compliance test result to be anomalous. The Permittee shall complete all of the additional monitoring required in this subsection as soon as possible after notification by the Department that the compliance test result was not anomalous. If the one additional sample fails to comply with the effluent limit for acute toxicity, then the Permittee shall proceed without delay to complete all of the additional monitoring required in this subsection. The one additional test result shall replace the compliance test result upon determination by the Department that the compliance test result was anomalous.

If all of the additional compliance monitoring conducted in accordance with this subsection complies with the permit limit, the Permittee shall search all pertinent and recent facility records (operating records, monitoring results, inspection records, spill reports, weather records, production records, raw material purchases, pretreatment records, etc.) and submit a report to the Department on possible causes and preventive measures for the transient toxicity event which triggered the additional compliance monitoring.

If toxicity occurs in violation of the acute toxicity limit during the additional compliance monitoring, the Permittee shall submit a Toxicity Identification/Reduction Evaluation (TI/RE) plan to the Department-within 60 days after test results are final. The TI/RE plan shall be based on WAC 173-205-100(2) and shall be implemented in accordance with WAC 173-205-100(3).

E. Monitoring When There Is No Permit Limit for Acute Toxicity:

The Permittee shall test final effluent once in the last summer and once in the last winter prior to submission of the application for permit renewal, and shall include the results of this testing prior to or with the application for permit renewal (Condition G7). All species used in the initial acute effluent characterization or substitutes approved by the Department shall be used and results submitted to the Department as a part of the permit renewal application process.

F. Sampling and Reporting Requirements:

1. All reports for effluent characterization or compliance monitoring shall be submitted in accordance with the most recent version of Department of Ecology Publication # WQ-R-95-80, *Laboratory Guidance and Whole Effluent Toxicity Test Review Criteria* in regards to format and content. Reports shall contain bench sheets and reference toxicant results for test methods. If the lab provides the toxicity test data on floppy disk for electronic entry into the Department's database, then the Permittee shall send the disk to the Department along with the test report, bench sheets, and reference toxicant results.
2. Testing shall be conducted on 24-hour composite samples. Samples taken for toxicity testing shall be cooled to 4 degrees Celsius while being collected and shall be sent to the lab immediately upon completion. The lab shall begin the toxicity testing as soon as possible but no later than 36 hours after sampling was ended.
3. All samples and test solutions for toxicity testing shall have water quality measurements as specified in Department of Ecology Publication # WQ-R-95-80, *Laboratory Guidance and Whole Effluent Toxicity Test Review Criteria* or most recent version thereof.
4. All toxicity tests shall meet quality assurance criteria and test conditions in the most recent versions of the EPA manual listed in subsection A. and the Department of Ecology Publication # WQ-R-95-80, *Laboratory Guidance and Whole Effluent Toxicity Test Review Criteria*. If test results are determined to be invalid or anomalous by the Department, testing shall be repeated with freshly collected effluent.

5. Control water and dilution water shall be laboratory water meeting the requirements of the EPA manual listed in subsection A or pristine natural water of sufficient quality for good control performance.
6. The whole effluent toxicity tests shall be run on an unmodified sample of final effluent.
7. The Permittee may choose to conduct a full dilution series test during compliance monitoring in order to determine dose response. In this case, the series must have a minimum of five effluent concentrations and a control. The series of concentrations must include the ACEC.
8. All whole effluent toxicity tests, effluent screening tests, and rapid screening tests that involve hypothesis testing and do not comply with the acute statistical power standard of 29 percent as defined in WAC 173-205-020 must be repeated on a fresh sample with an increased number of replicates to increase the power.

## S10. CHRONIC TOXICITY

### A. Effluent Characterization:

The Permittee shall conduct chronic toxicity testing on the final effluent. The three chronic toxicity tests listed below shall be conducted on each sample taken for effluent characterization.

Testing shall begin within 60 days after submission of the declaration of construction completion for facilities approved under the Westside 2000 Engineering Report (see S4.A). A written report shall be submitted to the Department within 60 days after the sample date. A final effluent characterization summary report shall be submitted to the Department within 90 days after the last monitoring test results are final. This summary report shall include a tabulated summary of the individual test results and any information on sources of toxicity, toxicity source control, correlation with effluent data, and toxicity treatability which is developed during the period of testing.

Effluent testing for chronic toxicity shall be conducted quarterly for one year. The Permittee shall conduct chronic toxicity testing during effluent characterization on a series of at least five concentrations of effluent in order to determine appropriate point estimates. This series of dilutions shall include the ACEC. The Permittee shall compare the ACEC to the control using hypothesis testing at the 0.05 level of significance as described in Appendix H, EPA/600/4-89/001.

Chronic toxicity tests shall be conducted with the following three species and the most recent version of the following protocols:

Freshwater Chronic Toxicity Test Species		Method
Fathead minnow	<i>Pimephales promelas</i>	EPA/600/4-91/002
Water flea	<i>Ceriodaphnia dubia</i>	EPA/600/4-91/002
Alga	<i>Selenastrum capricornutum</i>	EPA/600/4-91/002

B. Effluent Limit for Chronic Toxicity:

After completion of effluent characterization, the Permittee has an effluent limit for chronic toxicity if any test conducted for effluent characterization shows a significant difference between the control and the ACEC at the 0.05 level of significance using hypothesis testing (Appendix H, EPA/600/4-89/001) and shall complete all applicable requirements in subsections C, D, and F.

If no significant difference is shown between the ACEC and the control in any of the chronic toxicity tests, the Permittee has no effluent limit for chronic toxicity and only subsections E and F apply.

**The effluent limit for chronic toxicity is no toxicity detected in a test concentration representing the chronic critical effluent concentration (CCEC).**

In the event of failure to pass the test described in subsection C of this section for compliance with the effluent limit for chronic toxicity, the Permittee is considered to be in compliance with all permit requirements for chronic whole effluent toxicity as long as the requirements in subsection D are being met to the satisfaction of the Department.

The CCEC means the maximum concentration of effluent allowable at the boundary of the mixing zone assigned in Section S1.D pursuant to WAC 173-201A-100. The CCEC equals 1.8 percent effluent.

After completion of effluent characterization, the Permittee has an effluent limit for chronic toxicity if any test conducted under subsection A results in an NOEC less than the ACEC or if any test shows a significant difference between the control and the ACEC at the 0.05 level of significance using hypothesis testing (Appendix H, EPA/600/4-89/001). The Permittee shall complete all applicable requirements in subsections C, D, and F upon determining that an effluent limit for chronic toxicity applies to the discharge.

If no test resulted in a NOEC less than the ACEC or if no significant difference is shown between the ACEC and the control in any of the chronic toxicity tests, the Permittee has no effluent limit for chronic toxicity and only subsections E and F apply.

C. Monitoring for Compliance With an Effluent Limit for Chronic Toxicity:

Monitoring to determine compliance with the effluent limit shall be quarterly for the remainder of the permit term using each of the species listed in subsection A above on a rotating basis and performed using at a minimum the CCEC, the ACEC, and a control. The Permittee shall schedule the toxicity tests in the order listed in the permit unless the Department notifies the Permittee in writing of another species rotation schedule.

Compliance with the effluent limit for chronic toxicity means no statistically significant difference in response between the control and the test concentration representing the CCEC. The Permittee shall immediately implement subsection D. if any chronic toxicity test conducted for compliance monitoring determines a statistically significant difference in response between the control and the CCEC using hypothesis testing at the 0.05 level of significance (Appendix H, EPA/600/4-89/001). If the difference in response between the control and the CCEC is less than 20 percent, the hypothesis test shall be conducted at the 0.01 level of significance.

In order to establish whether the chronic toxicity limit is eligible for removal from future permits, the Permittee shall also conduct this same hypothesis test (Appendix H, EPA/600/4-89/001) to determine if a statistically significant difference in response exists between the ACEC and the control.

D. Response to Noncompliance With an Effluent Limit for Chronic Toxicity:

If a toxicity test conducted for compliance monitoring under subsection C determines a statistically significant difference in response between the CCEC and the control, the Permittee shall begin additional compliance monitoring within one week from the time of receiving the test results. This additional monitoring shall be conducted monthly for three consecutive months using the same test and species as the failed compliance test. Testing shall be conducted using a series of at least five effluent concentrations and a control in order to be able to determine appropriate point estimates. One of these effluent concentrations shall equal the CCEC and be compared statistically to the nontoxic control in order to determine compliance with the effluent limit for chronic toxicity as described in subsection C. The Permittee shall return to the original monitoring frequency in subsection C after completion of the additional compliance monitoring.

If the Permittee believes that a test indicating noncompliance will be identified by the Department as an anomalous test result, the Permittee may notify the Department that the compliance test result might be anomalous and that the Permittee intends to take only one additional sample for toxicity testing and wait for notification from the Department before completing the additional monitoring required in this subsection. The notification to the Department shall accompany the report of the compliance test result and identify the reason for considering the compliance test result to be anomalous. The Permittee shall complete all of the additional monitoring required in this subsection as soon as possible after notification by the Department that the compliance test result was not anomalous. If the one additional sample fails to comply with the effluent limit for chronic toxicity, then the Permittee shall proceed without delay to complete all of the additional monitoring required in this subsection. The one additional test result shall replace the compliance test result upon determination by the Department that the compliance test result was anomalous.

If all of the additional compliance monitoring conducted in accordance with this subsection complies with the permit limit, the Permittee shall search all pertinent and recent facility records (operating records, monitoring results, inspection records, spill reports, weather records, production records, raw material purchases, pretreatment records, etc.) and submit a report to the Department on possible causes and preventive measures for the transient toxicity event which triggered the additional compliance monitoring.

If toxicity occurs in violation of the chronic toxicity limit during the additional compliance monitoring, the Permittee shall submit a Toxicity Identification/Reduction Evaluation (TI/RE) plan to the Department within 60 days after test results are final. The TI/RE plan shall be based on WAC 173-205-100(2) and shall be implemented in accordance with WAC 173-205-100(3).

E. Monitoring When There Is No Permit Limit for Chronic Toxicity:

The Permittee shall test final effluent once in the last summer and once in the last winter prior to submission of the application for permit renewal and shall include the results of

this monitoring prior to or with the application for permit renewal (Condition G7). All species used in the initial chronic effluent characterization or substitutes approved by the Department shall be used and results submitted to the Department as a part of the permit renewal application process.

F. Sampling and Reporting Requirements:

1. All reports for effluent characterization or compliance monitoring shall be submitted in accordance with the most recent version of Department of Ecology Publication # WQ-R-95-80, *Laboratory Guidance and Whole Effluent Toxicity Test Review Criteria* in regards to format and content. Reports shall contain bench sheets and reference toxicant results for test methods. If the lab provides the toxicity test data on floppy disk for electronic entry into the Department's database, then the Permittee shall send the disk to the Department along with the test report, bench sheets, and reference toxicant results.
2. Testing shall be conducted on 24-hour composite effluent samples. Samples taken for toxicity testing shall be cooled to four degrees Celsius while being collected and shall be sent to the lab immediately upon completion. The lab shall begin the toxicity testing as soon as possible but no later than 36 hours after sampling was ended.
3. All samples and test solutions for toxicity testing shall have water quality measurements as specified in Department of Ecology Publication # WQ-R-95-80, *Laboratory Guidance and Whole Effluent Toxicity Test Review Criteria* or most recent version thereof.
4. All toxicity tests shall meet quality assurance criteria and test conditions in the most recent versions of the EPA manual listed in subsection A and the Department of Ecology Publication # WQ-R-95-80, *Laboratory Guidance and Whole Effluent Toxicity Test Review Criteria*. If test results are determined to be invalid or anomalous by the Department, testing shall be repeated with freshly collected effluent.
5. Control water and dilution water shall be laboratory water meeting the requirements of the EPA manual listed in subsection A or pristine natural water of sufficient quality for good control performance.
6. The whole effluent toxicity tests shall be run on an unmodified sample of final effluent.
7. The Permittee may choose to conduct a full dilution series test during compliance monitoring in order to determine dose response. In this case, the series must have a minimum of five effluent concentrations and a control. The series of concentrations must include the ACEC and the CCEC.
8. All whole effluent toxicity tests, effluent screening tests, and rapid screening tests that involve hypothesis testing and do not comply with the chronic statistical power standard of 39 percent as defined in WAC 173-205-020 must be repeated on a fresh sample with an increased number of replicates to increase the power.

## **S11. OUTFALL EVALUATION**

The Permittee shall inspect initially, and every two years thereafter, the submerged portion of the outfall line and diffuser to document its integrity and continued function. If conditions allow for a photographic verification, it shall be included in the report. By May 15, 2003, and every two years thereafter, the inspection report shall be submitted to the Department.

## **S12. EFFLUENT MIXING STUDY**

### **A. General Requirements**

The Permittee shall determine the degree of effluent and receiving water mixing which occurs within the mixing zone (as defined in permit Condition S1.C). The degree of mixing shall be determined during critical conditions, as defined in WAC 173-201A-020 Definitions- "Critical Condition," or as close to critical conditions as reasonably possible. Critical conditions evaluated shall include at least the 10<sup>th</sup> percentile and 90<sup>th</sup> percentile current velocities at the 7Q10 low and high river flow situations. If the Permittee desires the recognition of seasonal mixing zones, the analysis must determine and evaluate seasonally critical conditions. This analysis shall consider the mixing and pollutant loading effects of stormwater lines and any other flows entering the outfall line that exit through the diffuser structure. If seasonal limits are requested, this analysis shall be seasonal as well. The critical condition scenarios shall be established in accordance with *Guidance for Conducting Mixing Zone Analyses* (Ecology, 1996).

The dilution ratio shall be measured in the field with dye using study protocols specified in the *Guidance*, Section 5.0 "Conducting a Dye Study," as well as other protocols listed in subpart C, Protocols. The use of mixing models is an acceptable alternative or adjunct to a dye study if the critical ambient and effluent conditions necessary for model input are known or will be established with field studies; and if the diffuser is visually inspected for integrity or has been recently tested for performance by the use of tracers. Critical effluent conditions shall be determined in consideration of stormwater discharges entering the outfall line. The *Guidance* mentioned above shall be consulted when choosing the appropriate model. The use of models is also required if critical condition scenarios that need to be examined are quite different from the set of conditions present during the dye study. The effect of the overlapping of effluent plumes must be addressed for modeling the 90<sup>th</sup> percentile current velocity situation.

Validation (and possibly calibration) of a model may be necessary and shall be done in accordance with the *Guidance* mentioned above - in particular subsection 5.2 "Quantify Dilution." The resultant dilution ratios for acute and chronic boundaries shall be applied in accordance with directions found in Ecology's *Permit Writer's Manual* (1994) as amended - in particular Chapter VI.

A Plan of Study shall be submitted to the Department for review not later than 30 days prior to initiation of the effluent mixing study.

### **B. Reporting Requirements**

If the Permittee has information on the background physical conditions or background concentration of chemical substances (for which there are criteria in Chapter 173-201A WAC) in the receiving water, this information shall be submitted to the Department as part of the Effluent Mixing Report.

The results of the effluent mixing study shall be included in the Effluent Mixing Report, which shall be submitted to the Department for approval no later than February 1, 2006.

If the results of the mixing study, toxicity tests, and chemical analysis indicate that the concentration of any pollutant(s) exceeds or has a reasonable potential to exceed the State Water Quality Standards, Chapter 173-201A WAC, the Department may issue a regulatory order to require a reduction of pollutants or modify this permit to impose effluent limitations to meet the Water Quality Standards.

The Permittee shall use some method of fixing and reporting the location of the outfall and mixing zone boundaries [i.e., triangulation off the shore, microwave navigation system, or using Loran or Global Positioning System (GPS) coordinates]. The method of fixing station location and the actual station locations shall be identified in the report.

C. Protocols

The Permittee shall determine the dilution ratio using protocols outlined in the following references, approved modifications thereof, or by another method approved by the Department:

- Akar, P.J. and G.H. Jirka. 1990. *Cormix2: An Expert System for Hydrodynamic Mixing Zone Analysis of Conventional and Toxic Multiport Diffuser Discharges*. USEPA Environmental Research Laboratory, Athens, GA. Draft, July 1990.
- Baumgartner, D.J., W.E. Frick, P.J.W. Roberts, and C.A. Bodeen, 1993. *Dilution Models for Effluent Discharges*. USEPA. Pacific Ecosystems Branch, Newport, OR.
- Doneker, R.L. and G.H. Jirka. 1990. *Cormix1: An Expert System for Hydrodynamic Mixing Zone Analysis of Conventional and Toxic Submerged Single Port Discharges*. USEPA, Environmental Research Laboratory, Athens, GA. EPA/600-3-90/012.
- Ecology, 1994. *Permit Writer's Manual*, Water Quality Program, Department of Ecology, Olympia WA 98504, July, including addenda through October 1996.
- Ecology, 1996. *Guidance for Conducting Mixing Zone Analyses, Permit Writer's Manual*, (Appendix 6.1), Water Quality Program, Department of Ecology, Olympia WA 98504, October.
- Kilpatrick, F.A., and E.D. Cobb. 1985. Measurement of Discharge Using Tracers. Chapter A16. *Techniques of Water-Resources Investigations of the USGS, Book 3, Application of Hydraulics*. USGS, U.S. Department of the Interior. Reston, VA.
- Wilson, J.F., E.D. Cobb, and F.A. Kilpatrick. 1986. Fluorometric Procedures for Dye Tracing. Chapter A12. *Techniques of Water-Resources Investigations of the USGS, Book 3, Application of Hydraulics*. USGS, U.S. Department of the Interior. Reston, VA.

## GENERAL CONDITIONS

### G1. SIGNATORY REQUIREMENTS

All applications, reports, or information submitted to the Department shall be signed and certified.

- A. All permit applications shall be signed by either a principal executive officer or a ranking elected official.
- B. All reports required by this permit and other information requested by the Department shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:
  - 1. The authorization is made in writing by a person described above and submitted to the Department, and
  - 2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility, such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)
- C. Changes to authorization. If an authorization under paragraph B.2 above is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of B.2 must be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.
- D. Certification. Any person signing a document under this section shall make the following certification:

"I certify under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

### G2. RIGHT OF ENTRY

The Permittee shall allow an authorized representative of the Department, upon the presentation of credentials and such other documents as may be required by law:

- A. To enter upon the premises where a discharge is located or where any records must be kept under the terms and conditions of this permit;

- B. To have access to and copy at reasonable times any records that must be kept under the terms of the permit;
- C. To inspect at reasonable times any monitoring equipment or method of monitoring required in the permit;
- D. To inspect at reasonable times any collection, treatment, pollution management, or discharge facilities; and
- E. To sample at reasonable times any discharge of pollutants.

**G3. PERMIT ACTIONS**

This permit shall be subject to modification, suspension, or termination, in whole or in part by the Department for any of the following causes:

- A. Violation of any permit term or condition;
- B. Obtaining a permit by misrepresentation or failure to disclose all relevant facts;
- C. A material change in quantity or type of waste disposal;
- D. A material change in the condition of the waters of the state; or
- E. Nonpayment of fees assessed pursuant to RCW 90.48.465.

The Department may also modify this permit, including the schedule of compliance or other conditions, if it determines good and valid cause exists, including promulgation or revisions of regulations or new information.

**G4. REPORTING A CAUSE FOR MODIFICATION**

The Permittee shall submit a new application, or a supplement to the previous application, along with required engineering plans and reports, whenever a material change in the quantity or type of discharge is anticipated which is not specifically authorized by this permit. This application shall be submitted at least 60 days prior to any proposed changes. Submission of this application does not relieve the Permittee of the duty to comply with the existing permit until it is modified or reissued.

**G5. PLAN REVIEW REQUIRED**

Prior to constructing or modifying any wastewater control facilities, an engineering report and detailed plans and specifications shall be submitted to the Department for approval in accordance with Chapter 173-240 WAC. Engineering reports, plans, and specifications should be submitted at least 180 days prior to the planned start of construction. Facilities shall be constructed and operated in accordance with the approved plans.

**G6. COMPLIANCE WITH OTHER LAWS AND STATUTES**

Nothing in the permit shall be construed as excusing the Permittee from compliance with any applicable federal, state, or local statutes, ordinances, or regulations.

**G7. DUTY TO REAPPLY**

The Permittee must apply for permit renewal at least 180 days prior to the specified expiration date of this permit.

**G8. REMOVED SUBSTANCES**

Collected screenings, grit, solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall not be resuspended or reintroduced to the final effluent stream for discharge to state waters.

**G9. TOXIC POLLUTANTS**

If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under Section 307(a) of the Clean Water Act for a toxic pollutant and that standard or prohibition is more stringent than any limitation upon such pollutant in the permit, the Department shall institute proceedings to modify or revoke and reissue the permit to conform to the new toxic effluent standard or prohibition.

**G10. OTHER REQUIREMENTS OF 40 CFR**

All other requirements of 40 CFR 122.41 and 122.42 are incorporated in this permit by reference.

**G11. ADDITIONAL MONITORING**

The Department may establish specific monitoring requirements in addition to those contained in this permit by administrative order or permit modification.

**G12. PAYMENT OF FEES**

The Permittee shall submit payment of fees associated with this permit as assessed by the Department. The Department may revoke this permit if the permit fees established under Chapter 173-224 WAC are not paid.

**G13. PENALTIES FOR VIOLATING PERMIT CONDITIONS**

Any person who is found guilty of willfully violating the terms and conditions of this permit shall be deemed guilty of a crime, and upon conviction thereof shall be punished by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment in the discretion of the court. Each day upon which a willful violation occurs may be deemed a separate and additional violation.

Any person who violates the terms and conditions of a waste discharge permit shall incur, in addition to any other penalty as provided by law, a civil penalty in the amount of up to ten thousand dollars for every such violation. Each and every such violation shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance shall be and be deemed to be a separate and distinct violation.

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MEMORANDUM OF AGREEMENT  
REGARDING OPERATION OF THE NPDES PERMIT PROGRAM  
BETWEEN THE ENERGY FACILITY SITE EVALUATION COUNCIL,  
STATE OF WASHINGTON, AND THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

The Chairman, on behalf of the Energy Facility Site Evaluation Council, State of Washington (hereinafter EFSEC), and the Regional Administrator of Region 10, United States Environmental Protection Agency (hereinafter EPA), have entered into this Memorandum of Agreement to define more clearly respective responsibilities for operation of the National Pollutant Discharge Elimination System (NPDES) and to establish policies and procedures for issuance of specific energy facility related waste discharge permits under the State of Washington's NPDES permit program as approved by EPA. All agreements between the Chairman and Regional Administrator are subject to review by the EPA Administrator, and if the Administrator determines that any provision of any such agreement does not conform to the requirements of Section 402(b) of the Clean Water Act, 33 U.S.C. §§1251 et seq., as amended (hereinafter, the "CWA"), or to the requirements of any applicable Federal regulations or policies, he or she shall notify EFSEC and the Regional Administrator of any proposed revisions or modifications

1 which must be in such agreement. After this Agreement has  
2 been effective for one year, EFSEC and Region 10  
3 representatives will meet and discuss changes to this  
4 document made necessary by changes to the applicable NPDES  
5 regulations.

6 I. GENERAL UNDERSTANDING

7 Adequate implementation of the objectives of chapter  
8 80.50 RCW, chapter 90.48 RCW and the Federal Clean Water Act  
9 require EFSEC to issue and to revise waste discharge permits  
10 for discharges to the public waters of the State of  
11 Washington and to conduct a firm and vigorous enforcement  
12 program. This will require a high degree of cooperation  
13 between the signatory agencies.

14 In accordance with Section 101(b) of the CWA, it is  
15 recognized that it is the primary responsibility and right of  
16 the State to prevent, reduce, and eliminate pollution; to  
17 plan the development and use of land and water resources; and  
18 to consult with the Administrator of EPA in the exercise of  
19 his or her authority under the CWA. EPA will provide  
20 appropriate technical services and financial aid to the State  
21 in connection with the prevention, reduction, and elimination  
22 of pollution.

23 II. POLICIES

24 It shall be the goal of EFSEC to insure that NPDES  
25 permits are processed for all applicants for site  
26 certification of proposed energy facilities whose projects  
27 include plans for waste discharge to State waters.

28 A. All applications received by EFSEC shall be reviewed  
29 initially for such items as proper signature, missing or  
30 questionable information, use of proper application form as  
31

1 adopted by EPA and forwarded to EFSEC, and proper facility  
2 identification. Processing of applications which are  
3 obviously incomplete or unsigned will not be completed until  
4 such time as the applicant has supplied the missing  
5 information or otherwise corrected the deficiency.  
6 Applications which appear complete shall be accepted by EFSEC  
7 for filing.

8 B. Each NPDES application accepted for filing shall be  
9 reviewed for adequacy of information, possible need for  
10 additional information and forms, and any other potential  
11 deficiencies. The EPA Regional Administrator also may review  
12 NPDES applications to determine if the forms are incomplete  
13 or deficient. EFSEC shall contact the applicant to obtain  
14 any additional information, documents, reports or forms  
15 necessary to complete the application.

16 III. DEFINITIONS

17 The NPDES program for energy facilities in the State of  
18 Washington, as defined by chapter 80.50 RCW, shall be  
19 administered by EFSEC in accordance with this Agreement and  
20 applicable State and Federal law.

21 A. "Energy facility" means an energy plant or  
22 transmission facilities. The following, however, are  
23 excluded from the provisions of chapter 80.50 RCW:

24 1. Facilities for the extraction, conversion,  
25 transmission, or storage of water, other than water  
26 specifically consumed or discharged by energy production or  
27 conversion for energy purposes; and

28 2. Facilities operated by and for the armed  
29 services for military purposes or by other Federal authority  
30 for the national defense.

1 B. "Energy plant" means the following facilities  
2 together with their associated facilities:

3 1. Any stationary thermal power plant with  
4 generating capacity of two hundred fifty thousand kilowatts  
5 or more and floating thermal power plants of fifty thousand  
6 kilowatts or more, including associated facilities;

7 2. Facilities which will have the capacity to  
8 receive liquefied natural gas in the equivalent of more than  
9 one hundred million standard cubic feet of natural gas per  
10 day, which has been transported over marine waters;

11 3. Facilities which will have the capacity to  
12 receive more than an average of fifty thousand barrels per  
13 day of crude or refined petroleum or liquefied petroleum gas  
14 which has been or will be transported over marine waters,  
15 except that the provisions of chapter 80.50 RCW do not apply  
16 to storage facilities unless occasioned by such new facility  
17 construction;

18 4. Any underground reservoir for receipt and  
19 storage of natural gas capable of delivering an average of  
20 more than one hundred million standard cubic feet of natural  
21 gas per day; and

22 5. Facilities capable of processing more than  
23 twenty-five thousand barrels per day of petroleum into  
24 refined products.

25 C. "Associated facilities" means storage, transmission,  
26 handling, or other related and supporting facilities  
27 connecting an energy plant with the existing energy supply,  
28 processing, or distribution system, including, but not  
29 limited to, communications, controls, mobilizing or  
30 maintenance equipment, instrumentation, and other types of  
31

1 ancillary transmission equipment, off-line storage or venting  
2 required for efficient operation or safety of the  
3 transmission system and overhead, and surface or subsurface  
4 lines of physical access for the inspection, maintenance, and  
5 safe operations of the transmission facility and new  
6 transmission lines constructed to operate at nominal voltages  
7 in excess of 200,000 volts to connect a thermal power plant  
8 to the Northwest power grid. Common carrier railroads or  
9 motor vehicles, however, are not included.

10 D. "Transmission facility" means any of the following  
11 together with their associated facilities:

12 1. A crude or refined petroleum or liquid petroleum  
13 product transmission pipeline of the following dimensions:  
14 larger than six inches minimum inside diameter between valves  
15 for the transmission of these products with a total length of  
16 at least fifteen miles; and

17 2. A natural gas, synthetic fuel gas, or liquefied  
18 petroleum gas transmission pipeline of the following  
19 dimensions: larger than fourteen inches minimum inside  
20 diameter between valves for the transmission of these  
21 products with a total length of at least fifteen miles for  
22 the purpose of delivering gas to a distribution facility,  
23 except an interstate natural gas pipeline regulated by the  
24 United States Federal Energy Regulatory Commission.

25 E. The Washington State Department of Ecology (DOE)  
26 shall have jurisdiction to issue, modify, or revoke NPDES  
27 permits for any other discharges in the State of Washington  
28 not specifically falling within the above definitions.

29 IV. PROCEDURES FOR ISSUING AND MODIFYING PERMITS SUBJECT TO  
30 EPA OBJECTION

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32 Page 5 of 15

1       A. General

2           The Regional Administrator may object to issuance or  
3 modification of EFSEC NPDES permits or specific terms and  
4 conditions contained therein.

5       B. Formulation of Proposed NPDES Permit

6           1. EFSEC will develop proposed NPDES permits.  
7 EFSEC shall consult with the EPA Regional Administrator in  
8 the development of draft permits. The EPA Regional  
9 Administrator shall provide technical assistance in the  
10 interpretation of effluent guidelines and other Federal  
11 regulations, preparation of public notices, fact sheets, and  
12 permits.

13           2. EFSEC shall submit the final proposed permit to  
14 the EPA Regional Administrator for review prior to any  
15 submission thereof to the Governor of the State.

16           The EPA Regional Administrator will be advised of, and  
17 shall have the right to attend, all meetings and hearings  
18 between applicants and EFSEC relative to formulation of a  
19 proposed NPDES permit. EFSEC representatives will be invited  
20 to attend any meeting between applicants and EPA relative to  
21 formulation of a proposed NPDES permit.

22           3. The Regional Administrator will have up to 30  
23 days, from receipt by the Region 10 Permits Branch of a  
24 proposed NPDES permit, pursuant to the right to object under  
25 Section 402(d) of the CWA, in which to comment upon, object  
26 to, or make recommendations with respect to the proposed  
27 permit. However, if the Regional Administrator so requests  
28 in writing, an additional 60 days shall be given for such  
29 review.

1           4. If the Regional Administrator objects to the  
2 issuance of the proposed permit, he or she shall notify the  
3 Chairman of EFSEC in writing of any objection to the proposed  
4 permit. This notification shall set forth in writing the  
5 general nature of the objection and shall be sent to the  
6 Chairman within the 30-day (or extended) period allotted for  
7 EPA review. Within 90 days following receipt of the proposed  
8 permit, the Regional Administrator shall also set forth in  
9 writing and transmit to the Chairman a statement of the  
10 reasons for the objection (including the section of the Act  
11 or regulations that support the objection), and the actions  
12 that must be taken by EFSEC in order to eliminate the  
13 objection (including the effluent limitations and conditions  
14 which the permit would include if it were issued by the  
15 Regional Administrator). EFSEC may request a hearing on  
16 EPA's objections in accordance with the following  
17 regulations: 40 CFR Part 123.23.

18           C. Issuance of NPDES Permit

19           1. NPDES permits will be issued by EFSEC only after  
20 notice and opportunity for public hearing as required by the  
21 CWA and regulations and guidelines adopted thereunder.

22           2. A proposed permit may issue without modification  
23 after the Regional Administrator has had an opportunity to  
24 review the document, and there are no significant adverse  
25 public comments. If the permit was modified after EPA's  
26 initial review, or there were significant public comments on  
27 the proposed permit, the Regional Administrator shall review  
28 the proposed permit pursuant to section IV.B., above.

29           If the Regional Administrator objects to the proposed  
30 permit, the procedures of Section 402(d) and implementing  
31 regulations shall be followed. In the case of proposed

1 permits for possible new sources under Section 306 of the  
2 CWA, EFSEC will submit with its proposed permit and public  
3 notice, a copy of its findings whether the source is a new or  
4 existing source.

5 No permit shall issue over the Regional Administrator's  
6 objection.

7 D. Transfer of Responsibility Between Washington State  
8 Department of Ecology and EFSEC

9 1. Permits which have been issued by DOE for energy  
10 facilities which now fall under the jurisdiction of EFSEC for  
11 siting will remain in effect until a site certification  
12 agreement has been executed and a revised NPDES permit has  
13 been attached thereto. Applicants holding valid NPDES  
14 permits are required to submit an application for an NPDES  
15 permit concurrent with the submission of an application for  
16 site certification.

17 2. With the issuance of an NPDES permit which  
18 incorporates the terms and conditions of a permit issued by  
19 DOE, and which new permit is an attachment to a site  
20 certification agreement, EFSEC will notify DOE and EPA that  
21 EFSEC has assumed jurisdiction and that the prior permit is  
22 no longer effective.

23 3. Permits which have been issued by DOE for energy  
24 facilities not affected by an application for site  
25 certification, though located in proximity to the proposed  
26 project, will remain under jurisdiction of DOE and will not  
27 be affected by the siting action.

28 V. COMPLIANCE MONITORING AND INSPECTION

29 A. By statute, RCW 80.50.040(11), EFSEC is to prescribe  
30 the means for monitoring the effects arising from the  
31 construction and the operation of energy facilities to assure

32 Page 8 of 15

1 continued compliance with the terms of certification. This  
2 includes the terms and conditions of the NPDES permit which,  
3 by attachment, is a part of the site certification  
4 agreement. In order to implement this statutory provision,  
5 EFSEC has directed by rule, WAC 463-38-065, that the  
6 monitoring activities of water discharges under a site  
7 certification agreement which incorporates an NPDES permit  
8 shall be done by DOE. EFSEC has contracted with and will  
9 continue to contract with DOE, subject to continuing  
10 legislative authority, for the performance of this monitoring  
11 service and will receive periodic reports from DOE attesting  
12 to compliance with the NPDES permit terms and conditions.  
13 EFSEC will file a copy of any such contract with EPA for  
14 appropriate review.

15 B. EFSEC will review and evaluate NPDES monitoring data  
16 submitted by permittees, as received, for possible violations  
17 of terms and conditions of the permit. If EFSEC determines  
18 that any conditions of the permit are violated, the permittee  
19 and the Regional Administrator shall be notified of the  
20 alleged violations.

21 C. EFSEC will conduct a timely and substantive review of  
22 all date-related permit conditions and reports received and  
23 will evaluate the permittee's compliance status.

24 This review will be conducted so as to assure that any  
25 violation is acted upon by initiation of an appropriate  
26 enforcement action, if warranted under applicable law and  
27 regulations, within thirty (30) days of the date a  
28 date-related report is due to the State.

29 D. EFSEC will make available, within thirty (30) days of  
30 receipt, copies of all NPDES monitoring forms and data

1     pertaining to permits for which the Regional Administrator  
2     has not waived the right of review, to the EPA Regional  
3     Administrator for inclusion in the National Data Bank. EPA,  
4     upon request, shall provide data summaries and other  
5     printouts to EFSEC within thirty (30) days. It is  
6     anticipated that dischargers shall report to EFSEC on  
7     standard EPA Discharge Monitoring Report forms.

8             E. The Regional Administrator may object in writing to  
9     deficiencies in NPDES reporting forms received from EFSEC.  
10    EFSEC will insure that any deficiencies identified by the  
11    Regional Administrator are corrected.

12            F. EFSEC will arrange to sample a certain number of  
13    permittees each year, including all major dischargers, as may  
14    be agreed upon between EFSEC and EPA.

15            EPA or EFSEC may determine that additional sampling  
16    surveys are necessary to monitor compliance with issued NPDES  
17    permits. If EPA makes a determination that additional  
18    sampling surveys are necessary or appropriate, it shall  
19    notify EFSEC of such determination and request EFSEC to  
20    conduct those sampling surveys. In cases where EFSEC chooses  
21    not to conduct the sampling survey in accordance with EPA  
22    requests, EPA may then conduct the survey itself, keeping  
23    EFSEC fully informed of plans and results.

24            G. EFSEC will notify the Regional Administrator as  
25    expeditiously as possible by telephone of any actual or  
26    threatened endangerment to the health or welfare of persons  
27    resulting from the discharge of pollutants.

## 28    VI. ENFORCEMENT

29            A. EFSEC shall have primary responsibility for taking  
30    appropriate enforcement actions against persons in violation  
31

1 of NPDES permits. The Regional Administrator, however, is  
2 not foreclosed from direct enforcement action in any case in  
3 which EPA determines that a violation has occurred and  
4 Federal enforcement is warranted. The Regional Administrator  
5 will be advised of any enforcement action taken, whether such  
6 enforcement action is administrative, criminal, or civil in  
7 nature, or a combination thereof, and, upon request, EPA will  
8 furnish appropriate technical assistance in such actions.

9 B. EFSEC will advise the Regional Administrator of the  
10 progress of enforcement proceedings and related matters. The  
11 Regional Administrator will receive a copy of any  
12 administrative or judicial order or directive related to  
13 compliance and will be advised of any violations of orders or  
14 directives.

15 C. Whenever the Regional Administrator, under authority  
16 in Section 309(a)(1), makes a finding of a violation of a  
17 waste discharge permit, EFSEC and the person in alleged  
18 violation will be notified. EFSEC will respond to such  
19 notification by advising the Regional Administrator of the  
20 action proposed with respect to such violation. If no  
21 appropriate corrective action is taken before the thirtieth  
22 (30th) day after the EPA notification, EPA may initiate  
23 corrective action and keep EFSEC advised of such action.

24 D. EFSEC understands and supports the EPA penalty policy  
25 as established in the April 11, 1978 memoranda of the  
26 Assistant Administrator for Enforcement as it may be revised  
27 from time to time. EFSEC agrees to apply this policy in all  
28 settlements of NPDES enforcement actions.

29 Failure by EFSEC to seek or to impose penalties  
30 consistent with national policies and objectives may be the  
31

1 basis for EPA's determination that the State has failed to  
2 take appropriate enforcement action as described in paragraph  
3 VI.C., above.

4 E. EFSEC understands the need for adequate financial  
5 support for enforcement activities. EFSEC will provide  
6 adequate staffing and financial resources to assure effective  
7 and prompt enforcement of violations of NPDES permits. In  
8 addition, EFSEC will assure that its existing available use  
9 of staff attorneys from the Office of the Attorney General  
10 will continue.

11 VII. WAIVER OF CERTAIN CATEGORIES AND CLASSES

12 A. The Regional Administrator recognizes that in  
13 approving EFSEC's program to conduct the NPDES for specific  
14 energy facilities, an implied degree of trust and confidence  
15 is placed in EFSEC to administer properly its program and to  
16 coordinate its activities with those State agencies with a  
17 direct interest in NPDES matters.

18 B. The Regional Administrator hereby waives the right to  
19 comment on, or object to, proposed NPDES permits and final  
20 adopted NPDES permits for discharges or proposed discharges  
21 from industrial or commercial sources with an average daily  
22 discharge of 0.1 MGD or less unless such discharges:

- 23 1. are to the territorial sea;
- 24 2. affect the waters of any other State;
- 25 3. are of toxic pollutants, including discharges  
26 covered by effluent standards, prohibitions, or limitations  
27 under Sections 307(a) or 301(b)(2)(C) and (D) of the CWA; or
- 28 4. contain hazardous pollutants listed under  
29 Section 311 of the CWA.

1           The foregoing does not include waiver of receipt of  
2 proposed NPDES permits, receipt of public notice of  
3 application for an NPDES permit including any required fact  
4 sheet, receipt of notice of public hearing, or receipt of a  
5 copy of all final NPDES permits issued.

6           The foregoing waiver shall not be construed to permit the  
7 issuance of NPDES permits which do not comply with applicable  
8 provisions of Federal or State laws, rules, regulations or  
9 guidelines.

10          The Regional Administrator reserves the right to  
11 terminate the foregoing waiver, in whole or in part, with  
12 respect to any specific discharge, at any time. Any such  
13 termination shall be accomplished by the Regional  
14 Administrator in writing and a copy of such termination shall  
15 be delivered to the Chairman.

#### 16 VIII. PROGRAM REVIEW

17          EPA is responsible for assuring that the NPDES Permit  
18 Program administered by EFSEC is consistent with all  
19 requirements of this Agreement, the State Program Plan, and  
20 applicable Federal policies and regulations. To fulfill this  
21 responsibility, EPA shall review as necessary or appropriate,  
22 information transmitted by EFSEC, meet with EFSEC officials,  
23 review information concerning specific facilities, review the  
24 public information process of EFSEC, and perform such other  
25 reviews as may be necessary.

#### 26 IX. INDEPENDENT EPA POWERS

27          Nothing in this Agreement shall be construed to limit the  
28 authority of EPA to take action pursuant to Sections 308,  
29 309, 311, 402, 504, or other Sections of the CWA.

1 X. EFFECTIVENESS, AMENDMENTS OR TERMINATION

2 This Memorandum of Agreement will take effect upon  
3 program approval by the Administrator of EPA and may be  
4 reviewed and revised as necessary. Any modifications of this  
5 Agreement shall not take effect until approved by the  
6 Administrator.

7 XI. EFSEC AUTHORITY

8 This Agreement is subject to the statutory jurisdiction  
9 of EFSEC and the appropriations made therefore.

12 ENERGY FACILITY SITE EVALUATION  
13 COUNCIL

14 Dated: 21 May, 1979

15 By: Nicholas D. Lewis  
16 NICHOLAS D. LEWIS, Chairman

17 Approved as to legal form:

18 Thomas F. Carr  
19 By: Thomas F. Carr  
20 THOMAS F. CARR  
21 Assistant Attorney General  
22 State of Washington

23 Acknowledged and accepted by  
24 WASHINGTON STATE DEPARTMENT OF  
25 ECOLOGY

26  
27  
28 Dated: 28 May 1979

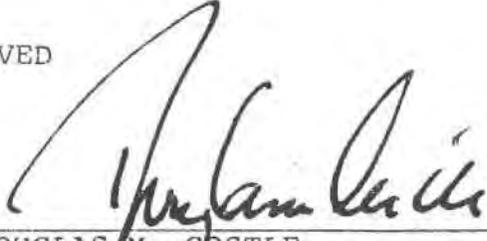
29 By: Wilbur G. Hallauer  
30 WILBUR G. HALLAUER, Director

ENVIRONMENTAL PROTECTION AGENCY

1  
2  
3 Dated: JUN 21 1979

By:   
DONALD P. DUBOIS  
Regional Administrator

4  
5  
6  
7 APPROVED

8  
9  
10 By:   
DOUGLAS M. COSTLE  
Administrator, United States  
Environmental Protection Agency

11  
12  
13 Dated: August 15, 1979



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Engineering Division

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

August 18, 2010

Mr. Michael Le  
Water Permits Section, Region 10 (OWW-130)  
US Environmental Protection Agency  
1200 6th Avenue  
Seattle, WA 98101

Dear Mr. Le:

Enclosed is a copy of the updated city of Vancouver "Industrial Pretreatment Program Manual" (4 Volumes, 2/24/10) for your records. This program and the City's revised Pretreatment Ordinance represent three years of collaborative effort between the City and the Department of Ecology (Ecology). The manual reflects the maturation of the program and incorporates EPA rule changes including "streamlining" revisions of 2006. The wholesale revision of the City's program manual describes better processes for ensuring the City fulfills the goals and requirements of the pretreatment program. It entirely replaces the prior manual.

Ecology has concluded its final review (checklist at Enclosure 2) and recommends approval of the modified program. Ecology follows the process of 40 CFR parts 403.18 and 403.11(a)-(f) in reviewing and approving such changes (excerpts at enclosure 1). This process provides EPA a copy of the changes and a chance to object (per 40 CFR 403.11(d)).

Ecology will have the city of Vancouver provide public notice (as allowed by 403.18(c)(4)), following the public process described in 403.11(b)(1), and provide public access as required under 403.11(f). Ecology will have the City collect public comment per 403.11(e) and forward all comments to Ecology for address; this process may occur concurrent with the City's adoption of the revised ordinance. Ecology will address any comments received by the City during the public notice (per 403.11(e)), conduct a public hearing if warranted (per 403.11(b)(2)), and modify the City's NPDES permit per 40 CFR parts 122.63(g) and 403.18 to recognize the new program and require the City's implementation of it.

Please contact me at 360-407-6277 or [dakn461@ecy.wa.gov](mailto:dakn461@ecy.wa.gov) if you have any concerns with the program or the approval process.

Sincerely,

David J. Knight, Industrial Pretreatment Engineer  
Southwest Regional Office  
Water Quality Program

Enclosures

cc: Frank Dick P.E., City of Vancouver

