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January 31, 2008

Allen Fiksdal, Manager
Energy Facility Site Evaluation Council
P.O. Box 43172
Olympia, Washington 98504

Re: Cherry Point Cogeneration Project - Request for SCA Amendment

Dear Allen:

We are writing on behalf of BP West Coast Products, LLC and Cherry Point Cogen LLC to request an amendment to the Site Certificate Agreement (SCA) for the Cherry Point Cogeneration Project (the "Project"). The requested amendment is intended to accomplish the following:

- (1) Transfer the SCA and associated permits to Cherry Point Cogen LLC, a newly formed affiliate of BP p.l.c.
- (2) Remove Laydown Areas 1 and 3 and associated stormwater treatment facilities from the SCA because they will no longer be used for the Project.
- (3) Modify wetland mitigation provisions to reflect changes in the wetland mitigation plan designed to compensate for some additional impacts anticipated at the Project Site and impacts resulting from proposed Refinery construction activities that are unrelated to the Project.

This letter provides further information about the requested amendment, explains why the amendment request satisfies the requirements set forth in the Council's regulations, addresses compliance with the State Environmental Policy Act (SEPA), and discusses the requested transfer of the Project's National Pollution Discharge Elimination System (NPDES) permit, State Wastewater Disposal Permit, and Prevention of Significant Deterioration (PSD) permit.

A red-line of the SCA showing proposed changes and a SEPA Environmental Checklist are enclosed to assist the Council in reviewing this request.

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Amendment Requested

BP requests an amendment to the SCA to transfer the SCA to Cherry Point Cogen LLC, to remove laydown areas and associated facilities that will no longer be used for the Project, and to modify wetland mitigation provisions.

1. SCA Transfer

BP West Coast Products, LLC ("West Coast Products"), is the corporate entity that currently holds the Cherry Point Cogeneration Project SCA. West Coast Products is a wholly-owned subsidiary of BP p.l.c., with assets that include the Cherry Point Refinery.

In order to more closely align the Cogeneration Project with the corporate organization and asset management structure of BP's worldwide business, BP recently formed Cherry Point Cogen LLC, a Delaware limited liability company. West Coast Products hereby requests that the Council transfer the SCA to Cherry Point Cogen LLC. Cherry Point Cogen LLC understands that it will become responsible for satisfying and complying with all SCA conditions and requirements upon transfer.

2. Laydown Areas

BP requests that the Council amend the SCA to remove provisions related to Laydown Areas 1 and 3, and their associated facilities, because those areas will no longer be used in connection with the Cogeneration Project construction.

The April 2003 Revised Application for Site Certification identified four areas to be used for equipment and materials storage, laydown and assembly during construction of the Cogeneration Project: Laydown Area 1 (located south of Grandview Road and west of Blaine Road); Laydown Area 2 (located between Laydown Area 1 and Grandview Road); Laydown Area 3 (located between Laydown Area 1 and Blaine Road); and Laydown Area 4 (located south of Grandview Road and west of Blaine Road). The Revised Application explained that these areas would be filled, covered with a gravel surface, and used for construction laydown. Upon the conclusion of construction, the Project proposed to turn over Laydown Areas 1, 2 and 3 to the Refinery for further use, and restore Laydown Area 4.

In November 2006, BP informed EFSEC that it no longer intended to use Laydown Area 2 for the Cogeneration Project, and therefore, wanted to turn it over to the Refinery for use. On February 13, 2007, EFSEC approved this request, concluding that no amendment to the SCA was required. *See* Resolution No. 320 (Feb. 13, 2007).

BP has now concluded that it will not use Laydown Areas 1 or 3 for the Cogeneration Project either. The Refinery wishes to utilize these areas for Refinery facilities, and has agreed to make

other developed areas available for construction laydown when the Cogeneration Project commences construction. Accordingly, BP requests that the conditions relating to these areas and the stormwater systems associated with them be removed from the SCA. BP still intends to utilize Laydown Area 4 for the Cogeneration Project, as described in the April 2003 Revised Application.

3. Wetland Mitigation and Project Site Impacts

BP also asks the Council to amend the SCA's wetland mitigation provisions to take into account additional wetland mitigation being proposed to compensate for slightly greater impacts at the Project Site and additional impacts associated with Refinery activities that are unrelated to the Cogeneration Project.

The April 2003 Revised Application described the Project's potential impact on wetlands and presented a compensatory mitigation plan. The Project was expected to result in the permanent fill of 30.51 acres of wetlands, and temporary impacts to 4.86 acres of wetlands. Some of these impacts were at the Project site, and others were at the Laydown Areas. In order to compensate for these wetland impacts, BP proposed to create, restore and enhance wetlands in two Compensatory Mitigation Areas, CMA1 and CMA2, north of Grandview Road, which together occupy approximately 110 acres. The SCA contains various provisions that address this mitigation proposal. BP also obtained a Section 404 Permit from the U.S. Army Corps of Engineers, authorizing the wetland impacts and mitigation.

As explained above, BP no longer intends to use the Laydown Areas west of Blaine Road (Areas 1, 2 and 3) for construction of the Cogeneration Project. This will substantially reduce the wetland impacts associated with the Cogeneration Project. However, further engineering design work has convinced BP that the Project is likely to result in an additional 2.5 acres of permanent impact in the southeast corner of the Project Site. With these changes, the Cogeneration Project would permanently impact 12.19 acres of wetland.

Although the Cogeneration Project will not impact wetlands on the areas formerly designated as Laydown Areas 1, 2 and 3, the Refinery does have plans to develop those areas, after obtaining appropriate permits. The Refinery's planned development would have wetland impacts that are similar, but not identical, to the impacts originally contemplated from the Cogeneration Project. A portion of the impacts that were originally expected to be temporary will be permanent, and a portion of the area originally identified as a temporary impact will not be impacted at all. None of the Refinery's activities or the associated wetland impacts will be under the Council's jurisdiction, but this information is provided so that the Council has a broader understanding of BP's plans for the area.

Although the Council only has jurisdiction over areas associated with the Cogeneration Project, the Corps of Engineers has jurisdiction over impacts to all jurisdictional wetlands. For this reason, both the impacts associated with the Cogeneration Project and the impacts associated with the Refinery's proposed activities will be addressed in a single amendment to the existing Section 404 Permit from the Corps. BP has modified its Compensatory Mitigation Plan to address impacts associated with both the Cogeneration Project and the proposed Refinery activities. A copy of the Revised Final BP Cherry Point Cogeneration/Facilities Projects Compensatory Mitigation Plan (Jan. 15, 2008) is submitted along with this request. Under the revised Compensatory Mitigation Plan, CMA1 and CMA 2 will be expanded by approximately 12 acres to a total of 122.6 acres. Additional wetland restoration and enhancement measures are also incorporated in the Plan.

BP has met with staff from EFSEC, the Corps of Engineers, the Washington Department of Ecology and Whatcom County to discuss the proposed revisions to the Compensatory Mitigation Plan. BP has also submitted the Revised Mitigation Plan to the Corps of Engineers along with an application to amend the Section 404 permit.

Regulatory Requirements

The Council's regulations include provisions that address the transfer of an SCA, and other provisions that concern SCA amendments generally. The requested transfer and amendment satisfy these requirements.

1. SCA Transfer

Regarding the transfer of an SCA, WAC 463-66-100(1) provides in pertinent part:

A certification holder seeking to transfer or otherwise dispose of a site certification agreement must file a formal application with the council including information about the new owner required by WAC 463-60-015 and 463-60-075 that demonstrate the transferee's organizational, financial, managerial, and technical capability to comply with the terms and conditions of the original site certification agreement including council approved plans for termination of the plant and site restoration.

WAC 463-66-100(4) provides in pertinent part:

Following the hearing the council may approve an application for transfer of the site certification agreement if the council determines that:

- (a) The applicant satisfies the provisions of WAC 463-60-015 and 463-60-075;

(b) The applicant is entitled to possession of the energy facility described in the certification agreement; and

(c) The applicant agrees to abide by all of the terms and conditions of the site certification agreement to be transferred and has demonstrated it has the organizational, financial, managerial, and technical capability and is willing and able to comply with the terms and conditions of the certification agreement being transferred.

The transfer from BP West Coast Products, LLC to Cherry Point Cogen, LLC satisfies these requirements.

WAC 463-60-015 directs Cherry Point Cogen, LLC to describe its organization and affiliations. Cherry Point Cogen, LLC is a limited liability company formed under the laws of Delaware on June 27, 2007. It is wholly-owned by BP p.l.c.

WAC 463-60-075 directs Cherry Point Cogen, LLC to "set forth insurance, bonding or other arrangements proposed in order to mitigate for damage or loss to the physical or human environment caused by project construction, operation, abandonment, termination, or when operations cease at the completion of a project's life." At all times following commencement of construction, Cherry Point Cogen LLC will maintain or cause to be maintained on its behalf the types of insurance required by federal, state and local ordinance or law, and by lenders. In particular, Cherry Point Cogen LLC will maintain commercial liability insurance, automobile insurance and worker's compensation and unemployment insurance comparable to that described in Appendix A to the April 2003 Revised Application. With respect to site restoration, Cherry Point Cogen LLC will comply with the financial assurance requirements found in Article IV. A. of the SCA.

Cherry Point Cogen LLC agrees to abide by all of the terms and conditions of the SCA upon transfer. Prior to commencing construction of the Project, Cherry Point Cogen LLC will ensure that it has the organizational, financial, managerial and technical capability to comply with the SCA.

2. SCA Amendments

With respect to other SCA amendments, WAC 463-66-040 provides:

In reviewing any proposed amendment, the council shall consider whether the proposal is consistent with:

1. The intention of the original SCA;

2. Applicable laws and rules;
3. The public health, safety, and welfare; and
4. The provisions of chapter 463-72 WAC.

The requested amendment satisfies these requirements.

First, the requested amendment is consistent with the intent of the SCA. The SCA contemplates that the Cogeneration Project would use nearby areas for construction laydown, and that the areas west of Blaine Road would ultimately be used by the Refinery after the Cogeneration Project construction. Given the delay in constructing the Cogeneration Project, the Refinery requires the use of these areas and will make other areas within the Refinery available for laydown uses when Project construction commences.

Likewise, the SCA contemplates that impacts to wetlands would be mitigated pursuant to a mitigation plan approved by the Army Corps of Engineers. The requested amendment reduces the wetland impacts associated with the Cogeneration Project but continues to mitigate those impacts pursuant to a plan subject to the Corps' approval.

Second, the requested amendment is consistent with applicable laws and rules. The requested amendment is consistent with the laws and rules governing power generation facilities in Washington. Compliance with SEPA and the Project's other permits are discussed below.

Third, the requested amendment is consistent with public health, safety and welfare. As explained above, the requested changes will actually reduce the impacts associated with the Cogeneration Project. The enclosed SEPA Checklist further demonstrates that the requested amendment will not result in any significant additional environmental impacts.

Fourth, the requested amendment is consistent with chapter 463-72 WAC, which concerns site restoration. The requested amendment does not change the Certificate Holder's obligations for site restoration.

SEPA

The Council is obligated to comply with the State Environmental Policy Act (SEPA), RCW chapter 43.21C. BP has completed and enclosed a SEPA Checklist. The Checklist explains why the requested amendment would not result in significant adverse effects on the environment.

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Associated Permits

In addition to the Site Certification Agreement, EFSEC has issued a NPDES Permit, a State Wastewater Disposal Permit, and a PSD Permit to BP West Coast Products, LLC for the Cogeneration Project. None of the proposed changes to Laydown Areas or wetland mitigation plan require substantive changes to these permits. However, BP does request that the Council transfer all of these permits to Cherry Point Cogen LLC along with the SCA.

Applicable regulations allow these permits to be transferred through administrative revisions and minor modifications, without any public notice-and-comment process. The transfer of an NPDES permit is generally accomplished by a minor modification, which does not require any public notice or comment process. *See* 40 C.F.R. § 122.63(d). Condition G8 of the NPDES permit for the Cogeneration Project specifically allows for its transfer by minor modification. Similarly, the transfer of a State Waste Discharge Permit generally occurs automatically upon notification that the facility has been transferred. *See* WAC 173-216-21. Condition G10 of the Wastewater Disposal Permit for the Cogeneration Project provides for its transfer in that way. Finally, a PSD permit can be transferred to a new owner by administrative revision. *See* WAC 173-400-750(3)(a), adopted by reference at WAC 463-78-005.

For the foregoing reasons, BP asks the Council to amend the SCA and transfer both it and the associated permits to Cherry Point Cogen LLC. Please feel free to call me or Darrel Thorson at BP (713-354-2169), if you need additional information.

Sincerely,



Karen M. McGaffey
Enclosures

cc: Darrel Thorson, BP