

AGENDA
EFSEC STANDARDS DEVELOPMENT GROUP
Thursday, May 23, 2002
9:00 a.m. – 1:00 p.m.
St. Placid Priory, 500 College St. NE, Lacey, Washington, 98516
Phone (360) 438-2595

1. Welcome and introductions
2. Review of last meeting's minutes
3. Presentations
 - A. Water Quantity: Revised Strawman Proposal Draft – Chuck Lean & Mike Lufkin
 - B. Air Quality: Revised Draft Proposed Rule for Standard – Mike Lufkin
 - C. Discussion on Format for Work Submitted to EFSEC – Dan Seligman
4. Report on wetlands – Chuck Blumenfeld
5. Next meeting and organization of remaining work

May 23, 2002

EFSEC Standards Development Group

Meeting Minutes

Lacey, Washington

Introduction and Wetlands Report

Bud Krogh opened the meeting and those present introduced themselves. No additions or corrections were offered for the minutes of the April 25, 2002, meeting. Chuck Blumenfeld gave a brief report on the progress of the wetlands subgroup. He said the group met by conference call earlier this week and will have another call in the first week of June. He is optimistic that a proposed standard will be drafted by the end of June or beginning of July. Mr. Krogh announced that Jim Luce approved a one-month extension to the discussion process, allowing for the final report to be submitted to EFSEC at the end of July. He also announced that Stephany Watson will be organizing and helping draft proposals for the final report.

Water Quantity

Chuck Lean reported that the Department of Ecology made some suggestions on how to approach the next proposed rule and tentative agreement was reached on some basic points. There were five significant items regarding water quantity that came out of his discussion with Ecology.

1. The Department of Ecology agrees that the EFSEC water permit for existing water rights is a "separate line." In other words, if an applicant has existing water rights, the applicant can get the water permit directly from EFSEC without getting in the Ecology queue. Thus, priority processing is not an issue. (Note: for *new* water rights, applicants must still get in the Ecology queue.)
2. EFSEC has no authority to issue new water rights. The applicant must come to EFSEC with enough rights.
3. When evaluating water rights, EFSEC will use the same substantive standards that Ecology uses.
4. Ecology needs funding for staff time to deal with water matters related to EFSEC applications.
5. Ecology wants the EFSEC rule to include a policy statement regarding the importance of water to the state and the environment. An applicant must demonstrate a need for water before it comes to EFSEC.

Still unanswered is the question of timing and the Ecology report of examination. The applicant is allowed to hire a consultant if Ecology does not issue its report quickly

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enough, but the question of when is “quickly enough” has not been decided. This report must be done before an EFSEC application is deemed complete, and here Ecology noted that timing is dependent on personnel and funding. Water rights are critical to whether an application goes forward or not. Tom Morrill of the Attorney General’s Office said an applicant goes to Ecology with a specific time frame and Ecology says whether it can do it in time or the applicant should go to someone else. Mike Harris of Ecology said it takes Ecology between three to six months to complete easy reports and up to a year to complete complex ones. Charles Carelli noted that there is a Memorandum of Understanding (MOU) between Ecology and EFSEC stating that Ecology must respond within five days whether it can (timely) do the water work required in an EFSEC application. Mr. Krogh asked Mr. Lean to attempt to flesh out the timing issue and be a little more specific than stating that a report of examination “must be completed in a timely manner” in section (II), part (D)(3)(D). Carol Jolly said the time window needs to be identified in section (II), parts (D)(3)(A) and (D)(3)(C) as well. Mr. Lean agreed the time could be spelled out for this too.

There was a brief discussion on storm water. Grant Bailey said that storm water may not be employed for consumptive use the way it is written in the proposal. Mr. Lean said it seemed to him storm water would account for a relatively small amount of water needed by a plant. However, he said this is worth thinking about. He will research whether or not storm water can be used at a power plant site and not released into the environment. He said it was not his intention to preclude use of storm water for some industrial purpose (if such use is possible).

Environmental Impacts Preamble

Mr. Blumenfeld said part (E) of section (II) in Mr. Lean’s proposal gets into how EFSEC considers other environmental impacts. He noted that sections (3) and (4) of Mike Lufkin’s air quality paper also address unmitigated environmental impacts EFSEC should consider. Rather than inserting a paragraph like this into each standard, Mr. Blumenfeld proposed that the group compose one generic section that covers each issue in regard to environmental impacts and include it as a preamble to standards proposed in the final report submitted to EFSEC. Mr. Luce said he encourages this as long as the group gets as much clarity as possible. Mr. Krogh asked Mr. Lufkin, Mr. Lean, Mr. Blumenfeld, and Kathleen Collins to start thinking how this generic language might be constructed based on sections (3) and (4) of Mr. Lufkin’s air quality proposal. Ms. Watson will coordinate the group and work toward drafting a straw proposal.

Air Quality

Mr. Lufkin said his latest draft is fairly similar to what he drafted last session. Given the debate last session between those who believed EFSEC does not have authority to impose standards beyond state and federal regulations and those who feel RCW 80.50 provides such authority for EFSEC, Mr. Lufkin said he again attempted to draft a compromise with parameters on what those limits should be.

Mr. Lufkin summarized his draft. He said the first paragraph explains the responsibilities of EFSEC according to WAC 463. The second paragraph shows how EFSEC’s responsibilities are met according to WAC 463. However, because Chapter

80.50 RCW mandates for EFSEC to balance demands for energy facilities with those of public health and welfare, Mr. Lufkin wrote in the second paragraph of his draft that EFSEC has authority to “consider during the adjudication, air quality issues that are not addressed under the existing regulatory framework.” The third and fourth paragraphs detail specific air quality issues that might be raised by intervenors, procedures in which parties plead issues, and the manner in which EFSEC determines whether or not probable significant impacts exist on the environment or on human health.

Mr. Lufkin said drafting this proposal was really tough because it gets to the major struggle at hand. Are state and federal standards a ceiling? Or does the Council have authority to go beyond existing regulations? If the latter is true, this allows the Council to become a gatekeeper – closing doors to some issues and opening doors to others.

Chuck Blumenfeld recommended the group remove the third and fourth paragraphs from Mr. Lufkin’s draft proposal and instead use them as the basis for writing the final report’s preamble on environmental impacts as relating to all issues.

Also, Mr. Blumenfeld said he felt the second half of the second paragraph (beginning with “However”) should be deleted. He felt that to allow EFSEC to “consider during the adjudication, air quality issues that are not addressed under the existing regulatory framework,” as stated in the second paragraph, would defeat the purpose of having a standard. It would open the door for EFSEC to include any number of issues for an extended period of time, thus eliminating the concept of measurable criteria that the group is trying to achieve.

Mr. Blumenfeld said that if a party gets a PSD permit, general qualifications are basically satisfied unless there are additional significant environmental impacts. He suggested that if existing state and federal regulations are satisfied, EFSEC should not allow more issues to be raised unless there are additional significant environmental impacts. If such impacts exist, they are to be addressed by the generic standards established in the preamble.

There was discussion and general consensus that Mr. Blumenfeld’s approach should be implemented. Mr. Krogh restated that the last sentence (beginning with “However”) in the second paragraph will be dropped and the third and fourth paragraphs will be used as part of generic language in the preamble. Also, there will be no specific examples of air quality standards mentioned. Mr. Lufkin confirmed he would redraft the air proposal not beyond the limits of SEPA.

Rusty Fallis asked Mr. Lufkin if it was sufficient to simply speak of a “significant adverse environmental impact” in the fourth paragraph or whether he was contemplating some measure of impact other than what SEPA provides. Mr. Lufkin said he looked at that, and thought his language would help the average person who reads the regulation gain an understanding of public health issues. Mr. Blumenfeld said he thought Mr. Lufkin’s language could be creating a legal ambiguity. He suggested Mr. Lufkin explain in the draft that “adverse environmental impact” has the same meaning in his rule as found in SEPA. Also, Mr. Lean proposed Mr. Lufkin change the word “significant” to “substantial.” It was agreed that “substantial” would replace “significant” and the meaning of adverse environmental impacts would be defined as found in SEPA.

“Deviation from Standards” Work Group

There was further discussion on SEPA and parties’ concerns that come to the Council after the SEPA process. To deal with unforeseen concerns raised by parties in siting plants as well as changes in plant specifications that occur after an EIS is published and before a site permit is issued (that don’t rise to the level of requiring a supplemental EIS), Mr. Fallis suggested it might be helpful to make procedural changes such as having an early public meeting. Chuck Carelli suggested it might be helpful to have a deadline and opportunity for a “mini-trial” so that the public knows it has a specific time by which it must raise issues.

Ms. Watson said she was hearing a fair amount of consensus that there is support for EFSEC to have some type of circumscribed discretion in dealing with these matters. Ms. Watson offered to organize a meeting with Grant Bailey, Mr. Lufkin, Mr. Fallis, Mr. Lean, and Mr. Blumenfeld and write a general provision (straw proposal) giving EFSEC some limited discretion to deviate from its standards and from the conclusion of an environmental impact statement. After further discussion, Mr. Krogh asked Ms. Watson to write a straw proposal.

Proposed Format for Submittal of Final Report to EFSEC

Dan Seligman began by saying his paper on format was not a proposal, but rather a suggestion to get people thinking about a general format that makes it easy to evaluate proposals. He said it seemed like the group was at a point where it should spend some time talking about the deliverables. He thought it would be useful to include in the final report prior to the rules themselves a brief summary of each issue, how the issue is dealt with presently by EFSEC, and what the problem is with each issue. Then, after the rules, it could be written how each rule adds consistency and certainty to the process.

Ms. Watson said she envisioned two main parts to the final report: (1) the summary of the discussion process which she will draft, and (2) Dan’s suggested format for presentation of the actual rules (which are drafted by members of the group and contain descriptions of the issues, how EFSEC deals with the issues now, etc. as Mr. Seligman outlined). Ms. Watson will aid in drafting and compiling the rules as well.

Jenene Fenton and Mark Anderson remarked on forms for submittal of actual proposed rules. Mr. Anderson said there is a code revisor form 101 that is filed early in the process as a vague statement as to what the rule is trying to accomplish and a CR102 that is filed later with specifics.

Chairman Luce commented that in Section (IV) of Mr. Seligman’s suggested format the group will look to Mr. Fallis for some advice on the format of the actual rules. Mr. Luce also said it is his hope that the group will circulate among themselves and propose something with signatures at the bottom, showing that different agencies and interest groups sign off on the process and the rules submitted. He said it would be very helpful to show what needs to be addressed and the pros and cons of the different approaches. Mr. Krogh added that the goal of this process is to get maximum consensus. Mr. Luce concurred.

Ms. Watson said she thought a good date for everyone’s final drafts to be submitted was the first week of July. Mr. Krogh agreed and said he envisioned the group

gathering for a whole-day event after the final report is written in mid-July to review and revise the final report.

Ms. Watson asked if it would be helpful to circulate CR 101 and/or 102 for those who are writing proposed rules. Mr. Anderson said he would send a copy of the forms to her. However, Mr. Luce said that Mr. Fallis (EFSEC) would be in charge of developing a template that will work according to CR 101/102.

Next Meeting and Organization of Remaining Work

The next meeting was set for Friday, June 14, 2002, 8 a.m. – 1 p.m., at St. Placid's Priory in Lacey. Subsequent meetings will take place Thursday, June 27, 2002, and Friday, July 12, 2002, at locations to be announced. After the July 12 meeting, the final report will be written. A final meeting will be held in mid to late July to review and revise the final report before it is submitted to EFSEC at the end of July.

The agenda for June 14 includes presentations and discussion on Oregon habitat rules (Gail McEwen, from Oregon's Department of Fish & Wildlife, and Tom Meehan, from Oregon's EFSC), socio-economics (Brian Carpenter, followed by comments from Association of Washington Cities & Counties and others present), water quantity (Chuck Lean and Mike Lufkin), and air quality (Mike Lufkin). Either a brief report or presentation with draft rule will be given on wetlands (Chuck Blumenfeld). Mike Lufkin will also present a draft mediation regulation on a mediation process applicable to all issues. The order of the agenda is not yet decided.

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Meeting
Attendance

Chuck Blumenfeld	(206) 264-6364
Lee Faulconer	(360) 902-1804
Jenene Fenton	(360) 902-8138
Rusty Fallis	(360) 664-0459
Kathryn Crum	(360) 280-6202
Victoria Lincoln	(360) 753-4137
Chuck Lean	(360) 352-3569
Tom King	(360) 753-1886
Dan Seligman	(360) 695-7422
Dick Fryhling	(360) 725-3047
Mike Lufkin	(360) 586-3649
Toni Potter	(206) 365-8949
Charles Carelli	(360) 407-6537
Grant Bailey	(425) 893-6429
Mike Mills	(360) 956-2151
Allen Fiksdal	(360) 956-2152
Dave Arbaugh	(360) 432-3700
Carol Jolly	(360) 902-0639
Hal Schlomann	(206) 246-1299
Sue Mauermann	(360) 407-0291
Tom Morrill	(360) 586-6744
Don Brookhyser	(503) 402-8702
Tony Ifie	(360) 902-1019
Gary Sprague	(360) 902-2539
Sophia Byrd	(360) 753-1886
Mike Harris	(360) 407-6389
Kathleen Collins	(360) 352-2458
Terry Oxley	(360) 943-9115
Rick Lovely	(360) 538-6234
Jim Luce	(360) 695-0584
Bud Krogh	(206) 464-1872
Stephany Watson	(503) 329-4259
Justin Long	(206) 464-0266
Darrell Peoples	(360) 943-9528
Mark Anderson	(360) 956-2170

WATER RIGHTS POINTS FOR CONSIDERATION

Draft May 23, 2002

I. EFSEC Water Resources Policy and Purpose

A. Policy. Water is a finite and valuable natural resource and its prudent management is necessary to promote the health and welfare of all citizens. It shall be EFSEC's policy to promote the use of the state's water resources in a manner that maximizes the net benefits to the natural environment and the state's need for energy facilities. Consistent with this policy EFSEC should encourage, to the extent practicable, water conservation measures for all energy facilities under its jurisdiction.

B. Purpose. The purpose of this rule is to set forth how applicant's proposing to use water resources for an energy facility may request and receive authorization for their intended use.

II. Procedures for water use authorization

A. Submission of Water Rights. Applicants proposing to use water for an energy facility must either (1) submit water right(s) or other water use authorizations suitable for use by the proposed energy facility without change, (2) submit water right(s) which are approvable to be changed to meet the point(s) of withdrawal, place of use and purpose of use identified in the application, or (3) submit water rights from both categories sufficient to meet the needs of the proposed facility. Submitted water rights or other authorizations to use water must be specifically identified in the application. In no event will EFSEC authorize the use of a larger quantity of water than authorized by the water rights submitted by the applicant and identified in the application.

B. Beneficial Use Requirement. Water rights submitted by the applicant and identified in the application shall have been beneficially used and not subject to relinquishment for nonuse.

C. Water Rights Suitable for Use Without Change. An applicant may identify in the application water right(s), leases of water rights held by others, or agreements to provide water by municipal corporations or other water purveyors in quantities sufficient to meet the requirements of the proposed energy facility. In such event, EFSEC shall determine whether the applicant holds, or will hold, sufficient legal authority to water in a quantity sufficient to meet the requirements of the proposed energy facility.

D. Water Rights Which Require Changes.

(1) If the applicant submits water right(s) that require changes to: (a) the point(s) of withdrawal and/or diversion; (b) the place of use; and/or (c) the purpose and time of use, in order to make the water right(s) suitable for use by the proposed energy facility,

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then EFSEC shall determine whether to authorize water use incorporating the requested change(s).

(2) EFSEC's determination shall be based on the substantive law applicable to a water rights change application (including but not limited to chapters 43.21A, 90.03, 90.14, 90.44, and 90.54 RCW, together with implementing regulations and judicial decisions, but not including requirements for priority processing of applications), as well as chapters 80.50 and 43.21C RCW.

(3) (a) Prior to EFSEC consideration of the requested changes the applicant must provide EFSEC with a report of examination, identifying the changes to be made, the quantities of water (both in gallons per minute and acre feet per year) which are eligible to be changed, together with any limitations on the use, including time of year. (b) The report of examination shall normally be prepared by Ecology and submitted to EFSEC. Ecology's cost for preparation of the report shall be borne by the applicant. (c) In the event that Ecology notifies the applicant that it will be unable to prepare a report of examination in a timely manner, the report of examination may be prepared by a consultant retained by the applicant. If the report of examination is prepared by a consultant, Ecology may provide EFSEC with any comments related to the requested changes that it deems appropriate. (d) Regardless of who prepares the report of examination, it must be completed in a timely manner that allows EFSEC and other interested parties ample time to review the report prior to hearing on the application.

(4) If EFSEC authorizes the applicant's requested water use in the site certification agreement, it may specify the terms and conditions of water use. EFSEC will not change the water rights acquired by the applicant. Rather, those water rights will be identified in the site certification agreement and form the basis for the water use authorized by EFSEC. No other use shall be made of those water rights during the life of the site certification agreement.

E. **Other Authority.** Nothing in this section is intended to limit or prohibit EFSEC's authority to require additional water conservation measures, water mitigation requirements, or other water usage related changes to a proposed energy facility in a site certification agreement.

F. **Options for Applicant.** Nothing in this section shall prevent an applicant from seeking to obtain new water rights from Ecology, or from applying to change a water right to either Ecology or a Water Conservancy Board, but any such application shall be separate and distinct from an application for site certification.

Points for Consideration:

Timing

Possible New Water From EFSEC For Dry Cooling

Fish & Wildlife Comments

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Draft Air Quality Regulation

5/23/02

WAC 463-39-010 Purpose. Air Quality Standards. Presumptions. Additional Issues.

1) The energy facility site evaluation council, under the authority vested in it by chapter 80.50 and 40 C.F.R. Part 52 is charged with responsibilities for the conduct of a statewide program of air pollution prevention and control for energy facilities. This regulation provides the basic framework for carrying out the council's responsibilities for such a program through the establishment of standards for maximum permissible emissions, the implementation of registration and notice requirements, provision for monitoring and reporting, and the identification of regulatory actions which may be taken to enforce standards.

2) In implementing an air pollution and control program for energy facilities, the Council's primary emphasis shall be on determining compliance with existing federal and state air quality standards as adopted in this chapter. A determination of compliance with state and federal air quality regulations shall create a presumption that all EFSEC air pollution standards have been satisfied. However, in recognition of the Council's mandate under Chapter 80.50 RCW to balance the demand for energy facility location with the broad interests of the public, and the need to determine that operational safeguards are technically sufficient to protect the public health and welfare, the Council may, in its discretion, consider during the adjudication, air quality issues that are not addressed under the existing regulatory framework.

3) In deciding whether to exercise its discretion, the Council shall consider whether the air quality issue being raised has a probable significant adverse environmental impact or a probable adverse impact on human health. Specific issues may include but are not limited to: (a) the impacts of unregulated pollutants that have or may potentially have a measurable impact on human health; (b) the specific impacts of unregulated pollutants that have or may have a measurable impact on the environmental and/or natural resource of the state. (c) demonstrated probable human health impacts associated with toxic air pollutants; (d) unique attributes of the airshed into which the project will emit, including topographic and meteorological features that create disproportionate adverse impacts; and (e) transboundary pollution issues.

4) A party seeking to raise an air pollution issue that is outside the scope of the existing regulatory scheme must, identify the issue with specificity, including a statement as to why the existing regulatory controls are not satisfactory to protect human health and the environment. The party must plead the issue in a manner that provides the Council with information necessary to make a determination as to whether a probable significant

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adverse environmental impact or a probable adverse impact on human health may exist. The Council shall make a determination at a prehearing conference as to whether the additional air pollution issue/s should be included in the adjudication. In no event, however, shall the Council make this determination prior to the issuance of the draft environmental impact statement.

5) The provisions of sections (2), (3), and (4) above do not apply to issues related to carbon dioxide emissions from a proposed energy facility.

PROPOSED FORMAT

I. ISSUE

E.g., water rights, socioeconomic impacts, noise, etc.

II. HOW EFSEC DEALS WITH THE ISSUE NOW

This section would contain a short description of EFSEC's current procedures and standards.

III. THE PROBLEM

What's wrong with the current EFSEC process? E.g., it takes too long, is too uncertain, doesn't allow for local involvement, etc.

IV. THE PROPOSED RULE

A summary of the proposed rule goes here. What would it do? The proponent need not include actual language, but he/she should include enough information so that EFSEC staff could draft a rule based on the contents in this section.

V. CONSISTENCY AND CERTAINTY

- A. Is the proposed rule consistent with EFSEC's statutory obligations?
- B. Would the rule provide greater certainty and predictability to the applicant and intervenors?