
WASHINGTON STATE

ENERGY FACILITY SITE EVALUATION COUNCIL

Richard Hemstad Building

1300 South Evergreen Park Drive Southwest

Conference Room 206

Olympia, Washington

October 20, 2015

1:30 p.m.

MONTHLY COUNCIL MEETING

Verbatim Transcript of Proceeding

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A P P E A R A N C E S

Councilmembers Present:

Bill Lynch, Chair
Liz Green-Taylor, Department of Commerce
Cullen Stephenson, Department of Ecology
Dan Siemann, Natural Resources

Local Government and Optional State Agency:

Ken Stone, Department of Transportation
Greg Shafer, Clark County
Larry Paulson, Port of Vancouver
Brian Snodgrass (via the bridge line)

Assistant Attorney General:

Ann Essko, Assistant Attorney General

Staff in Attendance:

Stephen Posner
Jim LaSpina
Tammy Mastro
Sonia Bumpus
Cassandra Noble
Kali Wraspir
Joan Aitken

Guests in Attendance:

Matt Kernutt, Attorney General's Office
Rich Downen, Grays Harbor Energy
Jay Derr, Van Ness Feldman
Irina Makarow, BergerABAM

A P P E A R A N C E S

Guests in Attendance Via Phone:

Tim McMahon, Stoel Rives

Jim Luce, former EFSEC Chair

Mark A. Miller, PacifiCorp Chehalis Generation Facility

Shannon Khounnala, Columbia Generating & WNP 1/4

Kristen Boyles, Earthjustice

Karen McGaffey, Perkins Coie

Jennifer Diaz, Puget Sound Energy

Bronson Potter, City of Vancouver

Linda Larsen, Columbia Waterfront

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1 OLYMPIA, WASHINGTON, OCTOBER 20, 2015

2 1:30 P.M.

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5 P R O C E E D I N G S

6
7 CHAIR LYNCH: Good afternoon. This is the
8 October 20th meeting of the Energy Facility Site
9 Evaluation Council.

10 Can we please have the clerk call the roll.

11 MS. MASTRO: Regular EFSEC Council,
12 Department of Commerce?

13 MS. GREEN-TAYLOR: Liz Green-Taylor, here.

14 MS. MASTRO: Department of Ecology?

15 MR. STEPHENSON: Cullen Stephenson is here.

16 MS. MASTRO: Fish and Wildlife?

17 CHAIR LYNCH: Joe Stohr is excused.

18 MS. MASTRO: Natural Resources.

19 MR. SIEMANN: Dan Siemann, here.

20 MS. MASTRO: Utilities and Transportation
21 Commission.

22 CHAIR LYNCH: Dennis Moss is excused.

23 MS. MASTRO: For the Vancouver Tesoro Savage
24 Terminal, Department of Transportation?

25 MR. STONE: Ken Stone is here.

1 MS. MASTRO: City of Vancouver?

2 MR. SNODGRASS (via the bridge line): Bryan
3 Snodgrass is on the phone.

4 MS. MASTRO: Clark County?

5 MR. SHAFER: Greg Shafer, present.

6 MS. MASTRO: Port of Vancouver?

7 MR. PAULSON: Larry Paulson's here.

8 MS. MASTRO: Chair, there is a quorum for
9 the regular EFSEC council and the project council.

10 CHAIR LYNCH: Thank you.

11 And if you'd please take a moment to look
12 over the proposed agenda and see if you have any
13 changes.

14 And just so that you know, we've been -- we
15 received a request by my predecessor, Mr. Luce, to
16 address the Council. And I would -- and he has a letter
17 that he has provided to the councilmembers, which is in
18 your packets, and I'm going to grant that request for a
19 short amount of time to address the Council regarding
20 public participation in the Draft EIS, and that will be
21 coming after we give the -- after we deal with the
22 extension of the application for the Tesoro project.

23 So that's the one change I have. Does
24 anyone else have any other suggested changes to the
25 agenda?

1 Seeing none, very good. We'll go forward.

2 And you'll see that we have two action items
3 today. One is the adoption of the -- the final adoption
4 of the rules to make it clear that we can issue coverage
5 under NPDES stormwater permits, under those general
6 permits to applicants, and also what sort of information
7 has to be submitted along with an application to the
8 Council if someone is looking at needing 401
9 certification or a hydraulic permit or other sorts of
10 coverage like that. So that's the other thing that the
11 rule will be addressing and we'll be taking those up
12 later.

13 And at this time, if there's anybody who
14 wishes to identify themselves who's on the phone, please
15 do so now, though you're not required to.

16 MR. MCMAHON: Tim McMahon, Stoel Rives.

17 CHAIR LYNCH: I'm sorry. I heard Tim
18 McMahon with Stoel Rives. I did not hear the other
19 person who came in at the same time.

20 MR. LUCE: Jim Luce.

21 MR. MILLER: Mark Miller with the Chehalis
22 Generation Facility.

23 MS. MCGAFFEY: Karen McGaffey, Perkins Coie.

24 MS. KHOUNNALA: Shannon Khounnala, Energy
25 Northwest.

1 MS. BOYLES: Kristen Boyles, Earthjustice.

2 MS. DIAZ: Jennifer Diaz, Puget Sound

3 Energy.

4 MR. POTTER: Bronson Potter, City of

5 Vancouver.

6 MS. LARSEN: Linda Larsen, Columbia

7 Waterfront.

8 CHAIR LYNCH: Is there anybody else who
9 would like to identify themselves for the purposes of
10 the record?

11 Okay. So let's go ahead and take a look at
12 the meeting minutes from the September 15, 2015, Council
13 meeting.

14 Does anyone have any suggested edits to
15 these minutes? I didn't see any myself. Actually,
16 there was one, and that is -- this is a minor change,
17 and this is on page five and line eight, the -- where I
18 asked the question, it should be opposed with a "d" on
19 the end.

20 MS. GREEN-TAYLOR: Mr. Chair.

21 CHAIR LYNCH: Yes, Ms. Green-Taylor.

22 MS. GREEN-TAYLOR: Also on page three, a
23 minor correction. It says Liz Green-Taylor "appears,"
24 and what I said actually was "is here."

25 CHAIR LYNCH: As opposed to being an

1 apparition.

2 MS. GREEN-TAYLOR: Yes.

3 CHAIR LYNCH: It is October.

4 Are there any other suggested edits? I
5 would entertain a motion at this time to approve the
6 minutes with these two corrections. All those in --
7 well, first I need the motion.

8 MR. STEPHENSON: I'll move to approve the
9 minutes as adjusted.

10 MS. GREEN-TAYLOR: And I'll second.

11 CHAIR LYNCH: It's moved and seconded that
12 we approve the minutes as amended from the
13 September 15th Council meeting.

14 All those in favor, say "aye."

15 MULTIPLE SPEAKERS: Aye.

16 CHAIR LYNCH: Opposed? Motion carries.

17 At this point in time, let's go ahead and
18 take updates from our facilities.

19 And Mr. Melbardis let us know earlier that
20 there are no significant changes with the Kittitas
21 Valley Wind Project. And he's on the road, and there is
22 a lime green report that they've given to the Council,
23 and you can see that there have been no complaints, no
24 incidences. So unless someone has a question, we'll
25 move on.

1 And Ms. Diaz, Wild Horse Wind Power Project.
2 MS. DIAZ (via the bridge line): Yes. Thank
3 you, Chair and councilmembers.

4 For the record, Jennifer Diaz, project
5 manager for Puget Sound Energy at the Wild Horse Wind
6 Facility. I have only one nonroutine update for the
7 Council today.

8 The Operational Stormwater Pollution and
9 Prevention Plan was updated and submitted to Ecology and
10 to EFSEC staff for review on September 18th. And that's
11 all I have.

12 CHAIR LYNCH: Any questions for Ms. Diaz?
13 Thank you, Ms. Diaz.

14 And now we'll hear from the ever-popular
15 Mr. Rich Downen from Grays Harbor Energy Center.

16 MR. DOWNEN: You're the only one.

17 Good afternoon, Chair Lynch, councilmembers.

18 For Grays -- oh, my name is Rich Downen.
19 I'm the plant manager at Grays Harbor Energy.

20 The monthly report for Grays Harbor Energy,
21 the only off-normal things would be Item 5.2 where we
22 had the opportunity to host a group of legislative
23 staffers for lunch and a plant tour in September. And
24 there were -- I forget how many there were -- there were
25 a handful of them, and we got to answer a lot of

1 questions. And we're pretty close, so that's always
2 an-- always an option if anyone ever wants to see one of
3 our plants.

4 And it's not -- it's not in the report, it
5 will be in the next month's report, but yesterday and
6 today we're re-performing two tests in our RATA test.
7 That's the stack -- the emissions testing that we do.
8 The vendor that did that had a contaminated sample for
9 one -- one specific test, and then missed one sample
10 point. Instead of nine data points, they took eight.
11 So they're re-performing that test yesterday and today,
12 so we'll include that in the October report.

13 CHAIR LYNCH: Okay. So we'll hear more
14 about that next month then?

15 MR. DOWNEN: Yes.

16 CHAIR LYNCH: Okay. Very good. And we
17 will -- some of us will certainly take you up on your
18 offer to view your facility at some point in time. I
19 know I'm interested and we just have had a lot on our
20 plate recently. But when it calms down a little bit, we
21 would love to see your facility.

22 MR. DOWNEN: I think there's talk of
23 November maybe working out for that bigger group that
24 was going to come for that tour, so...

25 CHAIR LYNCH: Okay.

1 Any questions for Mr. Downen?

2 Thank you.

3 And we have Mr. Miller on the line today?

4 MR. MILLER (via the bridge line): Yes, sir.

5 Good afternoon, Chair Lynch, councilmembers
6 and Staff. This is Mark Miller, the plant manager at
7 the PacifiCorp Chehalis Generating [sic] Facility. I
8 have no nonroutine comments to add to the simple report.

9 CHAIR LYNCH: Any questions for Mr. Miller
10 regarding the Chehalis Generation Facility?

11 Thank you, Mr. Miller.

12 With that, we'll turn to Ms. Khounnala, who
13 is going to update us first on the Columbia Generating
14 Station, and then the WNP 1/4 water rights.

15 MS. KHOUNNALA (via the bridge line):
16 Certainly.

17 In regards to Columbia Generating Station,
18 we have no nonroutine items to report this month.

19 Moving on to WNP 1/4, you'll see in your
20 packet that the summary remains the same and relatively
21 unchanged from the June 2015 report.

22 I can add, however, that I have been in
23 recent communications with Department of Energy and we
24 are working on timetables and timeframes and schedules
25 for going forward to complete the NEPA EA, so it is a

1 focus again, and we're hopefully getting back on track
2 to work through some of the elements that will work us
3 towards utilizing the water rights.

4 And I have no other comments.

5 CHAIR LYNCH: Any questions for
6 Ms. Khounnala on either the Columbia Generating Station
7 or WNP 1/4?

8 Thank you, Ms. Khounnala.

9 MS. KHOUNNALA: Thank you.

10 CHAIR LYNCH: At this point in time we'll
11 just get an update from Ms. Bumpus regarding the Tesoro
12 Savage Vancouver Energy Distribution Terminal. Oh, no,
13 we're not going to do that. What we're going to do is
14 Mr. LaSpina is going to update us on the Amon Creek
15 Preserve mitigation.

16 MR. LASPINA: Thank you, Chair Lynch.

17 Several months ago, EFSEC's staff informed
18 the Council of the need for a revegetation project at
19 the Amon Creek Nature Preserve mitigation site, which is
20 part of the WNP 1 Site Certification Agreement.

21 EFSEC staff received a revegetation plan in
22 April of this year. The plan was reviewed by the
23 Department of Transportation revegetation specialists.
24 And at this time, November 1st, the revegetation
25 planting will proceed. So that's just a little update

1 for you.

2 CHAIR LYNCH: And -- thank you, Mr. LaSpina.

3 And why we're updating the Council is
4 because earlier we let the Council know about the
5 situation where the City's Public Works Department had
6 put I believe it was a sewer line through the -- this
7 mitigation area, and then has been working with us and
8 the State Department of Transportation, who has been the
9 lead on this revegetation project, as well as the
10 Wildlands, Incorporated group.

11 And just so you know, we're talking about an
12 area of about 1.8 acres, and they did some revegetation
13 earlier, but a lot of weeds came in. And they tested
14 the soil, there's a number of things that they need to
15 do.

16 In fact, they've established three different
17 treatment areas for the area, and along with the new --
18 the revegetation that they're going to do, that's going
19 to be a three- to five-year maintenance and monitoring
20 situation, they're particularly concerned about invasive
21 weeds in the area.

22 And so hopefully with a little more
23 oversight at this area, we'll revegetate with natural
24 plants and we'll have a minimum of weeds in the area.
25 And because we are a player in this, we wanted to let

1 the Council know just where we are, but it has been the
2 Department of Transportation who has the expertise and
3 has been taking the lead on this.

4 And are there any questions for Mr. LaSpina?

5 Now we will turn -- thank you, Mr. LaSpina.

6 Now we'll turn to the update on the Tesoro
7 Savage Vancouver Energy Distribution Terminal.

8 MS. BUMPUS: Thank you.

9 Good afternoon, Chair Lynch and
10 councilmembers. I just have a few updates on the
11 development of the Draft Environmental Impact Statement.

12 Per the DEIS schedule, last week, on October
13 14th, EFSEC staff posted the PDEIS for councilmembers'
14 review on the EFSEC SharePoint site. The comment period
15 will conclude for councilmembers on October 27th.

16 And I have a couple of remarks to help
17 facilitate councilmembers' review of the documents. So
18 these are, as I said, just a couple of thoughts to
19 consider when entering comments on the document that we
20 think might help Staff when we are reviewing the
21 comments.

22 Just to consider, is the information or the
23 conclusions accurate? If you see something that you
24 think needs correction or rethinking, please go ahead
25 and enter how you think it should be corrected or what

1 the corrective action would be to address the issue you
2 identified.

3 Also, if there's a particular methodology
4 that you want to comment on, feel free to do that as
5 well. And again, to the extent that you can provide us
6 with comments about missing information, or perhaps an
7 inaccuracy, enter those and then provide the corrective
8 action along with that. That will help facilitate the
9 Staff's review of your comments.

10 I think that that's pretty much everything I
11 had to update.

12 CHAIR LYNCH: And we're still on track to
13 issue the Draft EIS, and the date we're going to do that
14 again is?

15 MS. BUMPUS: It's scheduled to be released
16 November 24th. And we are meeting all of our milestones
17 per the schedule, so it looks that we will meet that
18 deadline.

19 CHAIR LYNCH: Any questions for Ms. Bumpus?

20 MS. GREEN-TAYLOR: Yes.

21 CHAIR LYNCH: Yes, Ms. Green-Taylor.

22 MS. GREEN-TAYLOR: Thank you, Chair.

23 I don't have the schedule with me, but what
24 I remember about the schedule was that we had --
25 councilmembers had until November 10 to complete our

1 review of the DEIS, and I thought I heard you say that
2 we had only until October 27.

3 MS. BUMPUS: That's correct. The first two
4 weeks of the review cycle are for entering the comments
5 for review and entering of comments by councilmembers.
6 The last two weeks of this review cycle are for Staff to
7 pull those comments together and evaluate them.

8 MS. GREEN-TAYLOR: Okay.

9 CHAIR LYNCH: And respond to them as much as
10 possible before the publication of the Draft EIS?

11 MS. BUMPUS: Correct.

12 CHAIR LYNCH: I'm sorry if there was some
13 confusion, Ms. Green-Taylor.

14 MR. STONE: Chair Lynch, I have a question.

15 CHAIR LYNCH: Yes, Mr. Stone.

16 MR. STONE: Regarding how comments are
17 addressed, whether or not the Draft EIS gets revised as
18 a result of a comment, is that a responsibility of EFSEC
19 staff or the applicant or both?

20 CHAIR LYNCH: Mr. Posner?

21 MR. POSNER: I'll attempt to answer -- I
22 have to turn my mic on first. That might help.

23 So basically, you know, you have a certain
24 period of time where we're asking you to comment on the
25 document. We also have a certain period of time to try

1 to address those concerns.

2 So until we actually see what concerns you
3 have, we're not sure, you know, to what extent we're
4 going to be able to fulfill all -- address all concerns.
5 We're going to make every effort to do so, but we will
6 basically need to review your comments quickly and try
7 to determine which ones are the most significant and put
8 our energies towards trying to resolve those issues as
9 soon as possible.

10 Since we don't know the extent that -- you
11 know, how many comments we're going to receive, we can't
12 say at this point in time whether or not we're going to
13 be able to address every concern that councilmembers may
14 have, but we're going to make every effort to.

15 And the responsibility for addressing those
16 concerns will be between EFSEC staff and our consultant,
17 Cardno ENTRIX, to try to modify or to try to make
18 changes where we can.

19 MR. STONE: Okay. Thank you.

20 CHAIR LYNCH: And just as a reminder, the
21 Council will not be voting on the Draft EIS but the
22 final EIS. That's the document that we own, and so
23 that's the one that we'll have to make sure is --
24 addresses all the concerns that we -- that the Council
25 believes is important to address.

1 Any further questions? And I think at the
2 November --

3 MR. SNODGRASS (via the bridge line): Chair,
4 if I may, this is Brian Snodgrass on the phone.

5 CHAIR LYNCH: Oh, sorry.

6 Yes, Mr. Snodgrass.

7 MR. SNODGRASS: What -- I would presume that
8 at perhaps our next monthly meeting there would be some
9 level of Council -- if not a vote, there should be some
10 level --

11 CHAIR LYNCH: I'm sorry. We're losing you,
12 Mr. Snodgrass. Could you, A, speak a little slower,
13 and, B, speak a little louder.

14 MR. SNODGRASS: Sorry. I'm wondering then
15 what level of discussion is envisioned at next month's
16 Council meeting regarding the DEIS.

17 CHAIR LYNCH: I think at next month's
18 meeting -- and I haven't finalized this, I have some of
19 this in my head, but I haven't had a chance to talk to
20 Staff -- one of the things that we probably will be
21 trying to nail down is not only when do -- how does
22 this -- the councilmembers address publicly the Draft
23 EIS, at that point in time the Council will have already
24 submitted their comments to the Staff, so I think
25 there's probably an opportunity for the councilmembers

1 to address, in a big picture way, some things that they
2 like or don't like about the Draft EIS at the next
3 councilmember -- Council meeting.

4 And also we would be looking at when do
5 we -- when are we going to schedule the public comment
6 meetings for the Draft EIS. And those will take place
7 after the first of the year, but we need to figure out
8 exactly -- it looks like that will probably be after the
9 first of the year, but we need to finalize that as well.
10 So we've got some things we need to talk about between
11 now and then.

12 MR. SNODGRASS: Thank you.

13 CHAIR LYNCH: Any other questions regarding
14 the Tesoro update?

15 Thank you.

16 Let's go ahead and move -- we have an action
17 item to deal with, and that's the extension of the
18 application processing time because our current -- the
19 last extension that we granted for processing the Tesoro
20 application, that expires on November 1st of this year.
21 And obviously we won't make that -- we won't complete
22 our task by then, and so they have asked us to consider
23 an additional extension that would -- for six more
24 months, which would be May 1, 2016.

25 And Mr. Posner, do you have anything else to

1 add to that?

2 MR. POSNER: No. Just that the letter is in
3 your packets for your review, and it is a six-month
4 extension. The past extension requests have also been
5 for six months. So basically nothing more to add beyond
6 what you said, Chair Lynch.

7 CHAIR LYNCH: Is there any other discussion
8 regarding this extension?

9 At this point in time, I would entertain a
10 motion for its adoption.

11 MR. STEPHENSON: I will so move.

12 CHAIR LYNCH: Do we have a second?

13 MS. GREEN-TAYLOR: I'll second the motion.

14 CHAIR LYNCH: It's been moved and seconded
15 that the Council extend its review of this -- of the
16 Tesoro application to May 1, 2016.

17 All those in favor, say "aye."

18 MULTIPLE SPEAKERS: Aye.

19 CHAIR LYNCH: Opposed? Motion carries.

20 At this point in time, before we get to the
21 NPDES rules adoption, we will hear from my predecessor,
22 Mr. Luce.

23 Mr. Luce, you wanted to address the Council
24 regarding public participation in the -- on the DEIS.
25 And then, as I mentioned earlier, the councilmembers do

1 have your letter, so please proceed.

2 MR. LUCE (via the bridge line): Thank you,
3 Chair Lynch.

4 I do want to address the issue of the public
5 comment period for the Draft Environmental Impact
6 Statement, and my letter requests that EFSEC utilize its
7 discretionary authority to postpone the release of that
8 document until January 2nd, 2016.

9 Now, I laid out in my letter the reasons for
10 this. This project is unprecedented in EFSEC's history,
11 and it is a long EIS, I would imagine. It is certainly
12 a complex and highly-technical document.

13 For the Council to release this document
14 during the holiday period of November 24th, basically,
15 to January 10th, will require the public to review this
16 document and comment in a meaningful way, should they
17 choose to do so, over Thanksgiving, Hanukkah, Christmas,
18 Kwanzaa and the New Year. That is inconsistent with the
19 public interest and the public's ability to have a
20 meaningful comment. We all have competing demands
21 during this period.

22 Now, I'm aware that the applicant has
23 objected to what I believe was Mr. Posner's very
24 reasonable request of a 60-day review period, and I
25 wanted to thank Mr. Posner for making that request. The

1 applicant has insisted on the SEPA rules of 45 days --
2 no more than a 45-day review.

3 Now, I will just say that, during my
4 11 years as EFSEC Chair, we never had an applicant take
5 a position such as is being taken by Tesoro. When
6 additional time was needed, we had cooperation from our
7 applicants.

8 So I guess what I would say and what I would
9 ask is that -- and I will add parenthetically here that
10 the reason for the delay of the Draft Environmental
11 Impact Statement to date is not EFSEC, it is not Cardno
12 ENTRIX. The reason for the delay is this slipshod
13 process -- or draft that was put together by the
14 applicant in this case to begin with.

15 CHAIR LYNCH: Excuse me, Mr. Luce. I'm
16 going to stop you there because you're starting to stray
17 a little bit from your request. I understand what
18 you're saying, but we're not going to point any fingers
19 at anybody here today.

20 MR. LUCE: You don't have to. I pointed
21 them in my letter, and I'll point them again.

22 Vancouver Energy did a sloppy job on putting
23 its PDEIS together. That added a substantial amount of
24 time to the development of this Draft EIS.

25 So I guess what I'm asking, Mr. Chair, is

1 very simply to ask the Council to take under advisement
2 its authority, its legal authority, which I do believe
3 it has, to postpone the release of this document until
4 after the holidays, until January 2nd.

5 The applicant has every right, under SEPA
6 rules, to insist on a 45-day period of review,
7 notwithstanding the questionable reasonableness of that.
8 EFSEC has the authority to determine when that 45 days
9 runs.

10 And as long as we are faced with a timeframe
11 such as we are faced with, I do not believe it is in the
12 public interest to release this document and put that
13 sort of pressure, if you will -- and I'm not asking for
14 any more delay. I want this to move as expeditiously as
15 possible. This process has taken too long. I would
16 agree with the applicant on that. The question is, why
17 has it taken too long?

18 I would ask the counsel for the Environment,
19 and I spoke with Counsel yesterday -- I'm not sure he's
20 ready to do that today -- but the Counsel for the
21 Environment's role, as we all know, is to represent the
22 public interest. And I can't believe that there's much
23 more associated with this case at this time than in
24 providing the public adequate opportunity to review this
25 Draft EIS in a reasonable timeframe.

1 And then -- that will conclude my remarks.

2 I would ask the Council to take this matter under
3 advisement prior to its final commitment to release the
4 Draft EIS on November 24th.

5 CHAIR LYNCH: Thank you, Mr. Luce.

6 Is Mr. Kernutt here? Yes, he is.

7 Did you want to say anything to the Council?

8 MR. KERNUTT: For the record, Matt
9 Kernutt -- I'm sorry. Is this on? Matt Kernutt,
10 counsel for the Environment.

11 I did speak with Mr. Luce just yesterday. I
12 am not prepared at this time to make a formal request of
13 the Commission. I do believe that if such a request
14 does come, I will be CCing all the parties the
15 adjudication.

16 Adjudication timeframes are also triggered
17 in some way by the release of the Draft EIS, so I would
18 be -- at that time, if I do decide to submit such a
19 request, it will be timely, very timely, but I have not
20 yet committed to a position on Mr. Luce's request.

21 CHAIR LYNCH: Thank you.

22 MR. LUCE: Mr. Kernutt -- or Chair Lynch,
23 what would it take to, in your perspective, to trigger
24 such a request to the Council? I hope I have done that
25 today. This is a SEPA matter, not an adjudicatory

1 matter, so, therefore, I don't believe it's necessary
2 that one of the actual parties move this matter forward.

3 CHAIR LYNCH: Well, I can just say that, you
4 know, Mr. Kernutt --

5 MR. KERNUTT: Um-hmm.

6 CHAIR LYNCH: -- is certainly welcome to get
7 back to us at a later time.

8 And I appreciate former Chair Luce's
9 remarks, though just looking at the WACs again, and I
10 think Mr. Luce is right, it talks about we have 30 days
11 to give people an opportunity to review and comment on
12 the Draft EIS, and also we can extend that for 15 days,
13 which we have done, but the point is, is that it says
14 "from the date of issue."

15 So I don't believe that, under current law,
16 we have the authority to put the Draft EIS out there for
17 the public to review and not have that start the clock.

18 MR. LUCE: I would agree with you, Chair
19 Lynch. The question, as you stated it, is the date of
20 issue. And the Council has it within its discretionary
21 authority to determine what the date of issue is.

22 CHAIR LYNCH: And I thank you for your
23 thoughts, Mr. Luce, and we will take those under
24 advisement.

25 And Mr. Derr, did you want to address the

1 Council?

2 MR. DERR: Thank you, Mr. Chairman and
3 members of the Council. For the record, Jay Derr,
4 attorney for Vancouver Energy.

5 MR. LUCE: I can't hear Mr. Derr if he is --

6 MR. DERR: Okay. Is that better? No light
7 on, but I guess that works.

8 Jay Derr, attorney for Vancouver Energy. I
9 appreciate the opportunity to respond, because I confess
10 I feel a little ambushed by the request.

11 I guess what I would offer is, first, a
12 clarification. The -- the issues that the schedule has
13 brought up are issues that have been known since the EIS
14 schedule was changed last July. Thanksgiving didn't
15 change, Christmas didn't change, Hanukkah didn't change.

16 We discussed the implications of that --
17 this release date on the schedule in the public comment
18 period back then. We could have managed a -- not we --
19 EFSEC could have managed an EIS release to avoid the
20 holiday by releasing it earlier, and they chose not to
21 do that for whatever reasons.

22 I also want to be clear that Mr. Luce's
23 comments should -- while it may factually be correct
24 he's your predecessor, he is a vocal, known opponent to
25 the project, and his comments need to be viewed in that

1 light. This is comments of the opposition to the
2 project asking for additional delay. And so regardless
3 of his former roles, that's his role today in this
4 process, and that needs to be remembered.

5 And I'm happy to talk with counsel for the
6 Environment about what his issues or concerns on it --
7 30 seconds ago was the first I heard that he has a
8 question or even an interest in this issue.

9 And while it is a SEPA issue, they are --
10 the only dates we know so far about the adjudication
11 process, those clocks start running when the Draft EIS
12 is published. So there are implications for the
13 adjudication schedule which are relevant to when the
14 Draft EIS is published, at least as I understand the
15 order.

16 So it may be that there is a path that has
17 to consider implications for the adjudication schedule
18 and implications for the Draft EIS comment that should
19 be discussed.

20 So I would ask you not to decide a
21 publication date today, give us some time to talk about
22 it. And if there's an adjudication piece that needs to
23 incorporate all of the parties to the adjudication, we
24 have the opportunity to do that before you decide
25 suddenly, because the holidays are still the holidays,

1 that you're changing a publication date that you
2 previously committed to.

3 CHAIR LYNCH: Thank you, Mr. Derr.

4 MR. LUCE: On the --

5 CHAIR LYNCH: Excuse me, we're -- excuse me,
6 Mr. Luce, we've taken your comments already. Thank you.

7 What I would like to say -- like to see is,
8 if there is any additional leeway, that it be put on the
9 back end of the comment period as opposed to changing
10 the publication date, the issuance date. Because the
11 issuance date, you all might remember, is the trigger
12 date for a number of things related to the adjudication,
13 and we needed to get that set.

14 And so if there is any further change to the
15 issuance date, my preference would be that parties would
16 choose to agree to have more time put on the end as
17 opposed to changing the date when we publish this.

18 MR. DERR: And if I may, I certainly will
19 commit to speak with counsel for the Environment and --
20 about that, and if there's implications for the
21 adjudication, we obviously then need to connect with
22 those parties, present something to the ALJ, and see
23 what she decides about the process. But I certainly
24 will commit to have those conversations and see what we
25 can do.

1 CHAIR LYNCH: All right. And there should
2 not be -- if you put time on the back end of the
3 process, there should not be any -- in my mind any
4 change to the adjudication schedule, because the trigger
5 is the publication date, not when the comment period has
6 ended for the Draft EIS. So that's part of the reason
7 why, if there are any modifications, my preference would
8 be to allow additional time at the end.

9 MR. DERR: Okay. Thank you.

10 MR. LUCE: Chair Lynch, if I may, I'd like
11 to be included in those conversations, and I would agree
12 with you that a reasonable alternative may be to add
13 comment time at the end of the period.

14 CHAIR LYNCH: Well, I'm not going to order
15 anybody at this time to engage in conversations with
16 anybody. But certainly you've indicated your interest
17 in this matter, and people know how to get ahold of you.

18 So thank you, Mr. Luce. Thank you,
19 Mr. Derr.

20 MR. DERR: Thank you.

21 CHAIR LYNCH: So at this point in time,
22 let's move on to the NPDES rules adoption, and we'll
23 hear from Mr. LaSpina.

24 MR. LASPINA: Thank you, Chair Lynch and
25 councilmembers.

1 At the August Council meeting, EFSEC staff
2 requested the Council approval to begin public notice
3 for rule-making to clarify EFSEC's NPDES rules. That
4 was at the August Council meeting.

5 Yesterday we finished the public comment
6 period for the rule-making. We used an expedited
7 rule-making process of 48-day public comment review, and
8 we received no public comments.

9 So you all have the briefing memo that is in
10 your packet. I'm not going to read the entire memo
11 again. However, I will read an additional paragraph
12 that clarifies a comment made by Councilmember Ken
13 Stone.

14 Councilmember Ken Stone said at the August
15 meeting, or the September meeting: The term
16 "promulgate" is used in three places in the rule
17 revisions. The term is used in the context of
18 stormwater permits promulgated by Ecology.

19 Based on the comment by Councilmember Stone,
20 and to be consistent with State policy to use plain talk
21 when possible, EFSEC staff will revise the rule
22 language -- the proposed rule language to "issue" rather
23 than "promulgate."

24 EFSEC staff will send these final revisions
25 to the code reviser's office. The adoption order will

1 only be signed after EFSEC staff verifies that these
2 final revisions have been incorporated into the rule.

3 A little bit of background, to remind you
4 because it has been a couple months since we said this,
5 is, these revisions will maximize coordination and
6 minimize duplication of permitting efforts between EFSEC
7 and Ecology, and adoption of revisions to WAC 463-60-540
8 will provide guidance to applicants regarding what must
9 be submitted in order to obtain certain types of permit
10 coverage.

11 For these reasons, EFSEC staff recommends
12 the Council approve the proposed revisions to EFSEC's
13 rules. So what this means is, basically we're asking
14 for your approval that after "promulgate" -- or "issued"
15 is substituted for "promulgate" [sic] that EFSEC staff
16 have the authority to sign the CR-103, which is the
17 adoption order.

18 CHAIR LYNCH: Thank you.

19 MR. LASPINA: And I can answer any questions
20 if anybody has any.

21 CHAIR LYNCH: Any questions for Mr. LaSpina?
22 And just to add to the discussion briefly,
23 part of the reason why we're doing this is that a
24 previous applicant -- well, I think a current applicant
25 with the Council was looking at our rules and just was

1 not clear, because it wasn't very clear, about whether
2 the Council could issue coverage under a general
3 stormwater permit that Ecology has adopted to an
4 applicant.

5 And at first, I thought we'd have to change
6 the statutes. But after digging through them a bit
7 more, it became more clear to me that we had the
8 authority to do this, but it needed additional
9 clarification in our rules. And so that's the main
10 reason why you see the rule change in front of us, so
11 this is in keeping with the general good government
12 updates that we are doing as the Council.

13 So -- and then Councilmember Stone is
14 correct that most people know what "issued" means. Some
15 people might not know what "promulgated" means. I think
16 I said "promulgated" near my mother one time and she
17 slapped me.

18 So with -- we will consider the proposed
19 rules as -- with the one word change of striking
20 "promulgated" and inserting "issued." And with that, I
21 will -- the only -- I should remind councilmembers, it's
22 only the regular councilmembers who are voting on this
23 motion at this time.

24 So I will entertain a motion for adoption of
25 these rules.

1 MS. GREEN-TAYLOR: Mr. Chair, I move that we
2 adopt the rules as amended substituting the word
3 "issued" for "promulgated."

4 CHAIR LYNCH: And do we have a second?

5 MR. SIEMANN: I'll second it.

6 CHAIR LYNCH: It's been moved and seconded
7 that we adopt the proposed rules as amended.

8 All those in favor, say "aye."

9 MULTIPLE SPEAKERS: Aye.

10 CHAIR LYNCH: Opposed? Motion carries.
11 Good. That's another thing we can check off
12 the list. Very good.

13 And we have a -- or Mr. Posner provided us
14 with a 2nd quarter cost allocation.

15 MR. POSNER: Thank you, Chair Lynch.

16 In your packets is a document that lists the
17 Non-Direct Cost Allocation for the 2nd quarter, fiscal
18 year 2016.

19 And we do this at the beginning of every
20 quarter. We take a look at our past times spent,
21 technical time spent on projects, and anticipated time
22 spent for the quarter -- the quarter that we're in; in
23 this case, the 2nd quarter. So the numbers reflect the
24 percentages for this quarter.

25 I'll go ahead and read them off for the

1 benefit of those folks on the phone.

2 Kittitas Valley Project, seven percent; Wild
3 Horse, 7 percent; Columbia Generating Station,
4 17 percent; WNP 1/4, 3 percent; Whistling Ridge Energy
5 Project, 3 percent; Grays Harbor 1 and 2, 9 percent;
6 Chehalis Generation Project, 8 percent; Desert Claim
7 Wind Power Project, 2 percent; Grays Harbor Energy
8 3 & 4, 3 percent; and Tesoro Savage Vancouver Energy
9 Terminal, 41 percent.

10 And that's all I have on this matter. I'll
11 be happy to answer any questions councilmembers have.

12 CHAIR LYNCH: Any questions for Mr. Posner
13 regarding the allocation of expenses?

14 Very good.

15 And I just have two quick updates for the
16 councilmembers.

17 One is the Thurston County Superior Court
18 recently ruled and upheld the Columbia Generation
19 Station NPDES permit that the Council issued earlier,
20 and we were essentially upheld across the board on all
21 the challenges.

22 There was one portion of the language --
23 there's some boilerplate language regarding whole
24 effluent toxicity testing that Ecology has been
25 including in their permits for years, and there was an

1 earlier Supreme Court decision which invalidated that
2 language.

3 And that particular language was in the
4 permit when we issued it, but the Court's decision came
5 down after we issued that particular permit. And the
6 appellants to our Columbia Generation Station NPDES
7 permit rightly flagged that as a concern, and so that
8 language will be eventually replaced in the permit.

9 And the second thing is, is that I have been
10 able to schedule a meeting with stakeholders in early
11 November of this year to talk about legislation for
12 2017. And we will not be discussing any current
13 proposals in front of the Council as part of that group,
14 and mostly inviting the lobbyists for different entities
15 to come in, rather than the technical people, so that
16 they can start thinking about what they're -- and
17 talking to their clients about a streamlined EFSEC
18 process, and then we can pull in the technical people
19 after that. But because we're pulling this group
20 together late, it's just too hard to get this submitted
21 for 2016 request legislation unless everybody agrees and
22 demands that it go through.

23 And those are the only updates I have. Is
24 there anything else anyone else wants to bring up before
25 the Council?

1 Hearing none, I'd like to thank you all for
2 your participation today, and we're adjourned.

3 (Meeting concluded at 2:16 p.m.)

C E R T I F I C A T E

STATE OF WASHINGTON)
COUNTY OF KING) ss.

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

IN WITNESS WHEREOF, I have hereunto set my hand
and seal this 2nd day of November, 2015.

ANITA W. SELF, RPR, CCR #3032

Kittitas Valley Wind Power Project

Monthly Project Update

October 20, 2015

Project Status Update

September Production Summary:

Power generated: 23,832 MWh
Wind speed: 7.1 m/s or 16.33 mph
Capacity Factor: 32.8%

Safety:

No incidents

Compliance:

Project is in compliance as of October 15, 2015.

Sound:

No complaints

Shadow Flicker:

No complaints

Environmental:

No incidents

Project will de-energize for a 5 year substation maintenance for a duration of two days later this month.

Wild Horse

Wind Production: September generation totaled 55,297 MWh for an average capacity factor of 28.17%.

Safety: No lost-time accidents or safety incidents to report in September.

Compliance/Environmental: The Operational SWPPP was updated and submitted to Ecology and EFSEC for review and approval on September 18th.

EFSEC Monthly Operational Report

September, 2015

1. Safety and Training

- 1.1. There were no accidents or injuries during the month of September.
- 1.2. Conducted scheduled and required monthly training.
- 1.3. Conducted the scheduled safety committee meeting.

2. Environmental

- 2.1. Submitted the August Discharge Monitor Report (DMR) for Outfall 001.
- 2.2. Three employees completed opacity recertification training.

3. Operations & Maintenance

- 3.1. Grays Harbor Energy (GHE) operated 30 days and generated 372,902 MWh during the month of September.
- 3.2. The capacity factor (CF) was 83.5% in September, and 46.1% YTD.
- 3.3. The availability factor (AF) was 100% in September, and 94.1% YTD.

4. Noise and/or Odor

- 4.1. There were no complaints made to the site during the month of September.

5. Site Visits

- 5.1. There were no site visits by regulatory personnel during the month of September.
- 5.2. Invenergy/Grays Harbor Energy hosted a group of various legislative staff personnel for lunch and a plant tour on September 22nd.

6. Other

- 6.1. Grays Harbor is fully staffed with 22 personnel.
- 6.2. Noise monitoring equipment is installed and is functional, and will be added into the Distributed Control System (DCS) as a Main Control Room indication the next time the plant is off line.
- 6.3. Distributed Control System (DCS) logic for automatic isolation of the Outfall stream (Outfall 01) is modified to include the Cooling Tower Basin pH signal as an isolation parameter. This logic will be uploaded into the Distributed Control System (DCS) the next time the plant is off line.



Chehalis Generation Facility
1813 Bishop Road
Chehalis, Washington 98532
Phone: 360-748-1300

Chehalis Generation Facility----Monthly Plant Report - September 2015

Washington Energy Facility Site Evaluation Council

19 October 2015

Safety:

There were no recordable incidents this reporting period and the plant staff has achieved 4700 days without a Lost Time Accident.

Environment:

Waste water monitoring results are in compliance with the permit limits for the month of September 2015.

Personnel:

Authorized plant staffing level is currently 19 with 19 positions filled.

Operations and Maintenance Activities:

The Plant generated 151,168 MW-hrs in September and a capacity factor YTD of 20.5%.

Regulatory/Compliance:

There were no air emissions deviations, waste-water or stormwater deviations or spills during the month of September 2015.

Sound monitoring: There were no noise complaints to report.

Carbon Offset Mitigation

No update.
Respectfully,

Mark A. Miller
Manager, Gas Plant

**Energy Northwest
EFSEC Council Meeting
October 20, 2015
(Shannon Khounnala)**

I. Columbia Generating Station Operational Status

Columbia is online at 100% power and producing 1149 MWs. The plant has been online for 113 days.

There are no other events, safety incidents, or regulatory issues to report.

II. WNP 1/4 Water Rights

No change from the June 2015 report:

The Department of Energy continues to work on the NEPA Environmental Assessment (EA) for WNP 1/4. Currently, DOE is awaiting the bid from their contractor for preparation of the EA. The NEPA Environmental Assessment will allow a new lease to be signed between EN and the Department of Energy, and thereby allow for use of the water rights obtained in January of this year. The preparation of the NEPA Environmental Assessment is expected to last through the fall and winter of 2015 with formal reviews to follow.

October 16, 2015

Stephen Posner, Manager
Energy Facility Site Evaluation Council
Utilities & Transportation Commission
1300 S. Evergreen Park Dr. SW
P.O. Box 43172
Olympia, Washington 98504-3172

Re: Tesoro Savage Vancouver Energy Distribution Terminal
Project No. 2013-01— Request to Extend Statutory Deadline

Dear Mr. Posner,

Tesoro Savage Petroleum Terminal LLC dba Vancouver Energy (“Applicant”) submitted its application for site certification for the referenced terminal facility on August 29, 2013. State law provides that EFSEC “shall report to the governor its recommendation as to the approval or rejection of an application for certification within twelve months of receipt by the council of such an application, or such later time as mutually agreed by the Council and the Applicant.” Based on the time then expected to complete the EFSEC process, the Applicant requested on August 6, 2014 a six-month extension for completion, to March 2, 2015, and the Council granted that extension (the “First Extension”) at its regular meeting on August 19, 2014. The Applicant requested on February 5, 2015 an additional six-month extension for completion, to November 1, 2015, and the Council granted that extension (the “Second Extension”) at its regular meeting on February 27, 2015.

The Second Extension will expire on November 1, 2015, and it is now apparent that date cannot be met, and that a further extension is required. The Applicant therefore requests an additional six-month extension to May 1, 2016.

Thank you for your consideration of this extension. Applicant looks forward to meeting with you to discuss further the schedule for completing the EFSEC process.

Sincerely,



Kelly J. Flint

cc: Jared Larrabee, Tesoro Savage Petroleum Terminal LLC
Jay Derr, Van Ness Feldman
Irina Makarow, BergerABAM

October 19, 2015

Honorable William Lynch, Chair

Energy Facility Site Evaluation Council

Olympia, Washington 98504

Re: *Request for Delay of Public Comment Period to January 2, 2016/Tesoro-Savage/Vancouver Energy Draft Environmental Impact Statement*

Dear Chair Lynch:

I write as your predecessor to request that you and the EFSEC Council postpone release of the Tesoro-Savage/Vancouver Energy Draft Environmental Impact Statement (DEIS) until January 2, 2016.

Absent such a delayed release, and presuming the DEIS is otherwise completed November 24, the public will be required to comment on a very long, complex, and highly technical document during the holiday period of November 24-January 10. Insisting on such a review period – over a time frame including Thanksgiving, Hanukah, Christmas, Kwanza, and the New Year – is inconsistent with the public interest and the public's ability to meaningfully comment because of competing demands that all have during this period.

The Counsel for the Environment's responsibility is also to protect the public interest. I have spoken with Mr. Kernutt and have reason to believe he will join in supporting this request.

Having followed the Tesoro proceedings with interest, I appreciate EFSEC Manager Posner's request to Vancouver Energy asking for a 60 day comment period (Stephen Posner letter of June 8, 2015 to Vancouver Energy). Manager Posner made this request for the same reasons I advance: because of the importance, complexity, and presumable length of the document.

I was very disappointed that Vancouver Energy replied to Mr. Posner and insisted on no more than the 45 day review period provided by SEPA rules, complaining as it has throughout these proceedings that the EFSEC process has taken far too long. (June 24 and 29, 2015 Vancouver Energy to Stephen Posner)

It is true that the EFSEC process has been lengthy. But Vancouver Energy's own poor quality Preliminary Draft EIS is primarily responsible for this delay. (Stephen Posner letter to Vancouver Energy, July 2, 2015).

Stated differently, Vancouver Energy has "dirty hands" in the delay it complains about. EFSEC should not aid it by releasing the DEIS for a limited public comment during the November-January 2015 holiday time period. To do so would only reward Tesoro for its poor quality Preliminary DEIS work.

In summary, and for reasons stated above, I respectfully request that in the public interest that EFSEC exercise its discretionary authority and postpone release of the Tesoro DEIS until January 2, 2016.

Best regards,

James Luce

310 Pasadena Way

Vancouver, Washington 98661

360-907-3323



STATE OF WASHINGTON

ENERGY FACILITY SITE EVALUATION COUNCIL

PO Box 43172 • Olympia, Washington 98504-3172

BRIEFING MEMO

TO: Energy Facility Site Evaluation Council (EFSEC)

FROM: Staff

DATE: October 20, 2015

SUBJECT: Recommendation for Adoption of Revisions to:

- Chapter 463-60 WAC – Applications for Site Certification
- Chapter 463-76 WAC – Regulations for Compliance with NPDES Permit Program

Background

EFSEC is authorized by the U. S. Environmental Protection Agency (EPA) to implement the National Pollutant Discharge Elimination System (NPDES) Permit program through a delegation agreement executed in August, 1979. In accordance with the Memorandum of Agreement between EFSEC and EPA executed concurrently with the delegation letter, and consistent with state law (RCW 90.48.262(2) and RCW 80.50.040(9)), EFSEC is required to 'adopt procedures which will provide the maximum coordination and avoid duplication between EFSEC and Ecology to implement a comprehensive permitting program'.

The above statutory language clearly directs EFSEC to implement and maintain a permitting program consistent with Ecology. WAC 463-76-031 allows an applicant for site certification to apply for coverage under state general permits for stormwater discharges. Ecology general stormwater permits relevant to EFSEC-licensed projects include the Construction Stormwater General Permit and the Industrial Stormwater General Permit. Furthermore, WAC 463-60-537(3) states that an application for site certification must include a notice of intent to be covered under any applicable statewide general permit for stormwater discharge. However, the existing rule does not explicitly authorize EFSEC to issue those permit coverages.

In addition, WAC 463-60-537 also requires applicants for site certification to include a completed NPDES permit application for any proposed discharge to surface waters, and a completed state waste discharge application for any proposed discharges to ground water or to publicly owned treatment works. EFSEC also issues other types of permit coverage, such as water quality certifications under section 401 of the Federal Water Pollution Control Act, hydraulic project approvals, coverage under Ecology's statewide General Permit for Sand and Gravel, as well as coverage under other permits. EFSEC regulations, however, are silent as to what an applicant must submit in order to obtain coverage under these other types of permits.

Current Rule Adoption

The main purpose of this rule revision is to clarify EFSEC's statutory authority to issue coverages under Ecology promulgated general permits. Revisions to three sections of Chapter 463-76 WAC clarify EFSEC's authority to issue the permit coverages. These proposed rule revisions will allow EFSEC to more effectively implement the statutory intent of the legislature.

EFSEC also proposes adding a new section to Chapter 463-60 WAC. WAC 463-60-540 requires applications for site certification to include a completed joint aquatic resource permit application (JARPA) for activities that require the issuance of a 401 water quality certification or a hydraulic project approval. Applications must also include a notice of intent to be covered under the General Permit for Sand and Gravel, and a notice of intent to be covered under any other permits otherwise issued by state agencies.

The regulatory justifications for this rule revision are consistent with the intent of issuing general permits, which is to maximize coordination and minimize duplication between EFSEC and Ecology. The other justification for this rule revision is to provide guidance for applicants on what must be submitted in order to obtain certain types of permit coverage.

EFSEC's current rule adoption utilized the expedited rulemaking process. The expedited rulemaking process requires a minimum 45-day public comment period. The public comment period began when the CR-105 notice was published in the State Register on September 2, 2015 and ended October 19, 2015. EFSEC did not receive any comments on the proposed rule adoption.

Recommendation

Adoption of these proposed revisions to EFSEC's water quality rule, Chapter 463-76 WAC, will clarify EFSEC's authority to issue coverages under Ecology issued general permits. These revisions will also maximize coordination and minimize duplication of permitting efforts between EFSEC and Ecology. Adoption of WAC 463-60-540 will provide guidance to applicants regarding what must be submitted in order to obtain certain types of permit coverage. For these reasons EFSEC Staff recommends the Council approve the proposed revisions to EFSEC's rules.



EXPEDITED RULE MAKING

CR-105 (June 2004)
(Implements RCW 34.05.353)
EXPEDITED RULE MAKING ONLY

Agency: Energy Facility Site Evaluation Council (EFSEC)

Title of rule and other identifying information:

Chapter 463-60 WAC – Applications for Site Certification, subsection -540.

Chapter 463-76 WAC – Regulations for Compliance with NPDES Program, subsections -005, -010, and -025.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO

Name: Stephen Posner

Agency: EFSEC

Address: PO Box 43172, Olympia WA 98504-3172

AND RECEIVED BY October 19, 2015

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The purpose of this rulemaking is to clarify existing language in the two above cited WAC chapters. The proposed rule revisions will not substantively change the existing rules.

Reasons supporting proposal:

The proposed revisions will clarify EFSEC issuance of coverages under Ecology-issued NPDES general permits, authorized by RCW 90.48.160, RCW 90.48.262(2), and RCW 80.50.040. EFSEC issuance of coverages under Ecology-issued NPDES general permits implements the legislative directive to adopt rules which will provide maximum coordination and avoid duplication between the two agencies with respect to permits. RCW 90.48.262(2). In addition, the documents an applicant must file as part of a site certification application for certain permit coverage is clarified.

Statutory authority for adoption: RCW 90.48.262(2)

Statute being implemented: RCW 80.50.040

Is rule necessary because of a:

Federal Law?	☐ Yes	☒ No
Federal Court Decision?	☐ Yes	☒ No
State Court Decision?	☐ Yes	☒ No

If yes, CITATION:

DATE

August 19, 2015

NAME (TYPE OR PRINT)

Stephen Posner

SIGNATURE

TITLE

EFSEC Manager

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: August 19, 2015

TIME: 8:21 AM

WSR 15-17-115

(COMPLETE REVERSE SIDE)

Name of proponent: EFSEC

☐ Private
☐ Public
☒ Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting.....	Jim LaSpina	EFSEC, Olympia, WA	(360) 664-1362
Implementation....	Jim LaSpina	EFSEC, Olympia, WA	(360) 664-1362
Enforcement.....	Jim LaSpina	EFSEC, Olympia, WA	(360) 664-1362

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Energy Facility Site Evaluation Council (EFSEC)

Permanent Rule Only

Effective date of rule:

Permanent Rules

☒ 31 days after filing.

☐ Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

☐ Yes ☒ No If Yes, explain:

Purpose: The purpose of this rulemaking is to clarify existing language in Chapter 463-60 WAC and Chapter 463-76 WAC. The proposed rule revisions will not substantively change the existing rules.

Citation of existing rules affected by this order:

Repealed:

Amended: Chapter 463-60 WAC - Applications for Site Certification
Chapter 463-76 WAC - Regulations for Compliance with NPDES Program

Statutory authority for adoption: RCW 90.48.262(2)

Other authority: RCW 80.50.040

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR _____ on _____ (date).

Describe any changes other than editing from proposed to adopted version: No changes.

Cost-benefit analysis was not prepared under RCW 34.05.328, because this is not a significant legislative rule.

Date adopted:

NAME (TYPE OR PRINT)

Stephen Posner

SIGNATURE

TITLE

EFSEC Manager

CODE REVISER USE ONLY

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	1	Amended	3	Repealed	_____
-----	---	---------	---	----------	-------

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	1	Amended	3	Repealed	_____
-----	---	---------	---	----------	-------

The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

NEW SECTION

WAC 463-60-540 Other permit applications. The application for site certification shall include:

(1) A completed joint aquatic resource permit application (JARPA) for any proposed activities that would require the issuance of a water quality certification under section 401 of the Federal Water Pollution Control Act, or would otherwise require the issuance of a hydraulic permit approval;

(2) A notice of intent to be covered under a statewide general permit for sand and gravel promulgated by ecology; and

(3) A notice of intent to be covered under other permits that are otherwise issued by state agencies.

AMENDATORY SECTION (Amending WSR 04-23-003, filed 11/4/04, effective 11/11/04)

WAC 463-76-005 Purpose. (1) This chapter establishes regulations specifying procedures and other rules which will be utilized by the council in implementing section 402 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The purpose of these regulations is to establish a state ((individual)) permit program, applicable to the discharge of pollutants and other wastes and materials to the surface waters of the state, which complies with the requirements of chapters 80.50 and 90.48 RCW, EPA, and applicable state laws and regulations through the issuance of individual permits or coverage under storm water general permits promulgated by the department of ecology.

(3) These regulations apply to:

(a) Any energy facility for which a certification agreement has been executed pursuant to chapter 80.50 RCW et seq.; and

(b) Any energy facility for which an application has been filed with the council for certification pursuant to chapter 80.50 RCW et seq.

(4) The authority for these regulations is based upon RCW 80.50.040(1), chapter 90.48 RCW, chapter 155, Laws of 1973, and the act.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-76-010 Definitions. As used in this chapter, the following terms shall have the meanings indicated below:

(1) "Act" means the Federal Water Pollution Control Act (FWPCA) as amended, (33 U.S.C. 1251, et seq.).

(2) "Administrator" means the administrator of the United States Environmental Protection Agency.

(3) "Applicable water quality standards" means all water quality standards of the state of Washington to which a discharge is subject under state and federal law((7)) including, but not limited to, those which are codified in chapters 173-200, 173-201A, and 173-204 WAC, and 40 C.F.R. 131.36.

(4) "Applicant" shall mean any person who has applied for an NPDES permit pursuant to this chapter.

(5) "Certification agreement" means that binding site certification agreement executed between an applicant under chapter 80.50 RCW and the state, and shall contain the conditions set forth in the NPDES permit to be met prior to or concurrent with the construction or operation of any energy facility coming under chapter 80.50 RCW.

(6) "Chair" means the chairman of the energy facility site evaluation council.

(7) "Contiguous zone" means the entire zone established or to be established by the United States under Article 24 of the Convention of the Territorial Sea and the Contiguous Zone.

(8) "Council" means the Washington state energy facility site evaluation council.

(9) "Council manager" means the individual holding the position of manager of the council.

(10) "Discharge of pollutant" and the term "discharge of pollutants" each mean:

(a) Any addition of any pollutant or combination of pollutants to surface waters of the state from any point source;

(b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source.

(11) "Domestic wastewater" means water carrying human wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments or other places, together with such groundwater infiltration or surface waters as may be present.

(12) "Domestic wastewater facility" means all structures, equipment, or processes required to collect, carry away, treat, reclaim, or dispose of domestic wastewater together with such industrial waste as may be present. In case of subsurface sewage treatment and disposal, the term is restricted to mean those facilities treating and disposing of domestic wastewater only from a septic tank with subsurface sewage treatment and disposal and an ultimate design capacity exceeding fourteen thousand five hundred gallons per day at any common point.

(13) "Ecology" means the Washington state department of ecology.

(14) "Effluent limitations" means any restriction established by the state of Washington or the administrator on quantities, rates and concentrations of chemical, physical, biological and other constituents which are discharged from point sources into surface waters, the waters of the state, including schedules of compliance.

(15) "Energy facility" means any energy facility, as defined in RCW 80.50.014.

(16) "EPA" means the United States Environmental Protection Agency.

(17) "General permit" means a permit which covers multiple dischargers within a designated geographical area, in lieu of individual permits being issued to each discharger.

(18) "Governor" means the governor of the state of Washington.

(19) "Municipality" means a city, town, county, district, association, or other public body created by or pursuant to state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Federal Water Pollution Control Act (FWPCA).

(20) "National Pollutant Discharge Elimination System (NPDES)" means the national system for the issuance of permits under section 402 of the act and includes the Washington state program (set forth in chapter 151, Laws of 1973) for participation in said system which has been approved by the administrator in whole pursuant to section 402 of the act.

(21) "New source" means any building, structure, facility or installation from which there is or may be the discharge of pollutants, the construction of which is commenced:

(a) After promulgation of standards of performance under section 306 of the act which are applicable to such sources; or

(b) After proposal of standards of performance in accordance with section 306 of the act which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within one hundred twenty days of their proposal.

(22) "NPDES application" means the uniform national forms for application for a NPDES permit (including subsequent additions, revi-

sions or modifications duly promulgated by the administrator pursuant to the act) as prescribed by the council for use in the Washington state NPDES program.

(23) "NPDES form" means any issued NPDES permit, the NPDES application and the NPDES reporting form, and any uniform national form developed for use in the NPDES program as prescribed in regulations promulgated by the administrator.

(24) "NPDES permit" means the permit incorporated in the certification agreement issued by the council which regulates the discharge of pollutants pursuant to section 402 of the act.

(25) "NPDES program" means that program of the state of Washington pursuant to section 402 of the act.

(26) "NPDES reporting form" or "discharge monitoring report" means the uniform national forms (including subsequent additions, revisions or modifications duly promulgated by the administrator pursuant to the act) for reporting data and information pursuant to monitoring and other conditions of NPDES permits.

(27) "Permit" means an authorization, license, or equivalent control document issued by the council to implement this chapter. "Permit" includes issuance of coverage under a storm water general permit promulgated by the department of ecology. "Permit" does not include any permit which has not yet been the subject of final council action, such as a "draft permit" or a "proposed permit."

(28) "Person" means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, local, state, or federal government agency, industry, firm, individual or any other entity whatsoever.

(29) "Point source" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

(30) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. This term does not mean:

(a) Sewage from vessels within the meaning of section 312 of the act; or

(b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the state in which the well is located, and if such state determines that such injection or disposal will not result in the degradation of ground or surface water resources.

(31) "Regional administrator" means the EPA's region X administrator.

(32) "State" means any of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(33) "Storm water discharge associated with industrial activity" means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufactur-

ing, processing or raw materials storage areas at an industrial facility. For energy facilities, the term includes, but is not limited to, storm water discharges from industrial facility yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined in 40 C.F.R. 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this subsection, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on facility lands separate from the facility's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. The following additional categories of facilities are considered to be engaging in "industrial activity":

(a) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 C.F.R. subchapter N;

(b) Facilities where construction activity includes clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more.

(34) "Surface waters of the state" means all waters defined as "waters of the United States" in 40 C.F.R. 122.2 that are within the boundaries of the state of Washington. This includes lakes, rivers, ponds, streams, inland waters, wetlands, ocean, bays, estuaries, sounds, and inlets.

(35) In the absence of other definitions as set forth herein, the definitions as set forth in 40 C.F.R. 122.2 and 122.26(b) shall be used.

AMENDATORY SECTION (Amending WSR 04-23-003, filed 11/4/04, effective 11/11/04)

WAC 463-76-025 Authorization required. No waste materials or pollutants may be discharged from any energy facility as defined in WAC 463-76-010 into surface waters of the state, except as authorized pursuant to this chapter or as authorized by the council pursuant to its authority under chapter 80.50 RCW for coverage under a general permit promulgated by the department of ecology. In administering this chapter, the council will seek maximum coordination and avoid duplication between the council and the department of ecology pursuant to RCW 90.48.262(2).

Energy Facility Site Evaluation Council

Non Direct Cost Allocation for 2nd Quarter FY 2016 October 1, 2015 – December 31, 2015

The EFSEC Cost Allocation Plan (Plan) was approved by the Energy Facility Site Evaluation Council in September 2004. The Plan directed review of the past quarter's percentage of EFSEC technical staff's average FTE's, charged to EFSEC projects. This information is used as the basis for determining the non-direct cost percentage charge, for each EFSEC project. In addition, the Plan allows for adjustment due to anticipated work load and the addition of new projects.

Based on the levels of work during the 1st quarter of FY 2016, using the procedures for developing cost allocation, and allowance for new projects, the following percentages shall be used to allocate EFSEC's non direct costs for the 1st quarter of FY 2016:

Kittitas Valley Wind Power Project	7%
Wild Horse Wind Power Project	7%
Columbia Generating Station	17%
WNP-1	3%
Whistling Ridge Energy Project	3%
Grays Harbor 1&2	9%
Chehalis Generation Project	8%
Desert Claim Wind Power Project	2%
Grays Harbor Energy 3&4	3%
Tesoro Savage	41%

Stephen Posner, EFSEC Manager

Date: _____

Summary of FY 2016 Non Direct Allocation Rates

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Yr Avg
Kittitas Valley	8%	7%			7.5%
Desert Claim	2%	2%			2.0%
Whistling Ridge	3%	3%			3.0%
Columbia GS	16%	17%			16.5 %
WNP1	3%	3%			3.0%
G.H. 1&2	9%	9%			9.0%
Chehalis	9%	8%			8.5%
Wild Horse	8%	7%			7.5 %
G.H. 3&4	3%	3%			3.0%
Tesoro Savage	39%	41%			40.0%

Summary of FY 2015 Non Direct Allocation Rates

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Yr Avg
Kittitas Valley	5%	6%	6%	6%	5.6%
Desert Claim	2%	2%	2%	2%	2.0%
Whistling Ridge	3%	3%	3%	3%	3.0%
Columbia GS	20%	17%	18%	17%	18.3 %
WNP1	3%	3%	3%	3%	3.0%
G.H. 1&2	9%	10%	8%	9%	9.0%
Chehalis	9%	9%	9%	9%	9.0%
Wild Horse	7%	7%	7%	7%	7.0%
BP	2%	2%	2%	2%	2.0%
G.H. 3&4	3%	3%	3%	3%	3.0%
Tesoro Savage	37%	38%	39%	39%	38.4%

Summary of FY 2014 Non Direct Allocation Rates

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Yr Avg
Kittitas Valley	10%	7%	6%	5%	7.0%
Desert Claim	3%	2%	2%	2%	2.3%
Whistling Ridge	9%	4%	3%	3%	4.8%
Columbia GS	33%	22%	23%	21%	24.8%
WNP1	4%	3%	3%	3%	3.3%
Satsop	12%	9%	10%	11%	10.5%
Chehalis	10%	9%	9%	10%	9.5%
Wild Horse	10%	7%	6%	5%	7.0%
BP	3%	2%	2%	2%	2.3%
G.H. Energy	6%	4%	3%	3%	4.0%
Tesoro Savage		31%	33%	35%	33.0%