



August 25, 2016

Washington Department of Ecology
Attn: SEA Program — Federal Permit Coordinator
P.O. Box 47600
Olympia, WA 98504

Sent via e-mail to: ecyrefedpermit@ecy.wa.gov

RE: Comments on Clean Water Act Section 401 Certification Applications by Port of Kalama and Northwest Pipeline LLC for the Kalama Manufacturing and Marine Export Facility and the Kalama Lateral Pipeline Project.

To the Washington Department of Ecology:

Columbia Riverkeeper, Center for Biological Diversity, Save our Wild Salmon, Oregon Physicians for Social Responsibility, and the Washington State Chapter of the Sierra Club (collectively, “Commenters”) submit these comments to the Washington Department of Ecology (“Ecology”) regarding the applications for Clean Water Act Section 401 Certification submitted to Ecology by the Port of Kalama for the Kalama Manufacturing and Marine Export Facility (hereinafter, “the methanol refinery”), and by Northwest Pipeline LLC for the Kalama Lateral Pipeline Project (hereinafter, “the pipeline”).

Commenters represent tens of thousands of members and supporters working to protect and restore Washington’s environment and the Columbia River. Commenters’ members and supporters work, live, and recreate in and along the Columbia River and the surrounding

landscape near Kalama, the location of Northwest Innovation Works LLC's ("NWIW") proposed methanol refinery and export terminal.

Commenters are concerned by NWIW's plans to construct a 90-acre methanol refinery, export terminal, pipeline, and associated facilities in and along the lower Columbia River. NWIW's proposal would require Section 401 Certification from Ecology for the activities described in the October 9, 2015, Joint Public Notice of Applications ("JPN") and the Joint Aquatic Resources Permit Applications ("JARPA") for the methanol refinery and pipeline. NWIW's proposal would cause significant environmental and economic harm in the Columbia River estuary and beyond. The project would undermine Washington's efforts to protect water quality and recover endangered and threatened species. NWIW's proposed methanol refinery is the latest in a disturbing trend of fossil fuel export terminals that would industrialize and pollute the lower Columbia River and its surrounding landscape and contribute to global climate change. For the reasons explained below, Ecology should deny the requested Section 401 Certifications because the methanol refinery and pipeline will likely cause violations of Washington's water quality standards.

I. Incorporation by Reference of Past 401 Certification Comments.

Commenters incorporate by reference the comments on 401 Certification, and exhibits thereto, submitted by Columbia Riverkeeper to Ecology on November 5, 2015, in response to the JPN for these projects.

II. Request for Public Comment Period on Draft 401 Certifications.

Commenters hereby request a formal public opportunity to comment on drafts of any 401 Certifications that Ecology may issue for the refinery, terminal, and pipeline. Currently, Commenters and the public are limited to commenting on the JARPAs and JPN, essentially attempting in these comments to infer how Ecology might respond to the application materials when making decisions about 401 Certification. **The public deserves an opportunity to evaluate and provide input on whether Ecology's proposed 401 Certifications, and any conditions thereto, would provide reasonable assurances that the methanol project will not violate Washington's water quality standards.** That is the procedure Ecology uses when issuing NPDES permits; it should be Ecology's procedure for issuing 401 Certifications—both are Clean Water Act permitting processes that exist to protect Washington's water quality standards. Please provide an additional public comment period on the draft 401 Certifications, if any, for the methanol refinery, terminal, and pipeline.

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III. Supplemental Comments on Applications for 401 Certifications.

a. Supplemental Comments on 401 Certification for the Kalama Methanol Refinery and Export Terminal.

1. Ecology does not have authority to issue a 401 Certification for the Kalama methanol refinery and export terminal.

Ecology may not issue as 401 Certification for the Kalama methanol refinery because the refinery is an energy facility within the meaning of the Energy Facility Site Location Act, RCW 80.50 *et seq.*, and rightfully subject to the jurisdiction of the Washington Energy Facilities Site Evaluation Council. Specifically, the proposed Kalama methanol refinery and export terminal is an “energy plant[]” RCW 80.50.020(12). NWIW’s proposed methanol refinery is an energy plant because it is “capable of processing more than twenty-five thousand barrels per day of petroleum or biofuel into refined products” RCW 80.50.020(12)(f). Natural gas is a form of petroleum that, under NWIW’s proposal, would be refined into methanol.¹ The methanol refinery would receive more than 100,000 barrels per day of methane, the primary component in natural gas.² Because the methanol refinery is an energy facility, Ecology may not issue a 401 Certification for it. *See* WAC 463-14-050 (preempting “all matters relating to energy facility sites” by non-EFSEC agencies).

2. Ecology should not process either application for 401 Certification because NWIW has not yet committed to building the methanol refinery.

Even if Ecology had the legal authority to process these applications, to avoid wasting public money and Ecology’s time, Ecology should not process the 401 Certification applications until NWIW makes a firm commitment to the proposal. Several documents indicate that NWIW is still on the fence about whether to actually build the refinery, terminal, and pipeline. In an email dated August 7, 2015, NWIW’s agent Fred Scott told the Cowlitz County PUD that NWIW is “currently anticipating [a] Final Investment Decision in October 2016” Similarly, Northwest Pipeline told FERC on May 15, 2016, that NWIW’s “FID [final investment decision] is not projected to occur until 4th quarter 2016”³ These statements corroborate the lease agreement between the Port of Kalama and NWIW, which allows NWIW to withdraw from the lease by October 9, 2016.⁴ The global price of methanol has crashed since NWIW first proposed this refinery and export scheme, and the price of crude oil—a competing feed-stock for olefin

¹ Exhibit 1, *Email from EFSEC Chair Bill Lynch to Keith Philips* (November 5, 2013).

² Exhibit 2, Columbia Riverkeeper, *Petition to EFSEC for Declaratory Order*, p.7 (June 23, 2016).

³ Exhibit 3, Northwest Pipeline LLC, *Request for Extension of Time re Kalama Lateral Project*, p.1 (May 24, 2016)

⁴ Exhibit 4, Port of Kalama, *Second Amendment to Lease Agreement between NWIW and the Port of Kalama* (September 23, 2016).

production—remains much cheaper than NWIW anticipated.⁵ Accordingly, there is substantial uncertainty about this project’s profitability and whether NWIW—and its parents and investors—will decide to move forward. Ecology should request written clarification on the status of NWIW’s decision whether to construct the proposed methanol refinery and not invest any more public money or resources in processing these lengthy and complex 401 Certification applications until NWIW makes a final investment decision.

3. The Port of Kalama misrepresented federal funding sources for the methanol refinery and export terminal.

The Port of Kalama’s JARPA contains incorrect or, at the *very* least, incomplete information about federal funding sources for the project. Question 6h on the JARPA form asks: “Will any portion of the project receive federal funding?” and specifically asks the applicant to “list each agency providing funds.” Refinery JARPA, p.23. In response to Question 6h, the Port of Kalama admits that portions of the methanol project would receive federal funding, but then represents that “[s]pecific sources and agencies have not been identified.” *Id.* at 24. This statement is—at best—misleading. The Port *has* identified and is pursuing specific federal funding sources, from specific federal agencies, for specific aspects of this project—and the Port was doing so at the time it submitted the Refinery JARPA. For instance, the Port sought a \$15 million low-interest “Rural Development” loan from the U.S. Department of Agriculture to build the Raney collector well that would supply process water to the methanol refinery.⁶ The Port was also actively seeking a \$11.125 million 2015 TIGER grant from the U.S. Department of Transportation (“USDOT”) to build the methanol terminal dock when the Port submitted the Refinery JARPA.^{7,8} Moreover, the BergerABAM consultant who prepared the Refinery JARPA had reason to know of these federal funding sources because the firm BergerABAM also helped prepare the Port’s TIGER grant application.⁹ **Commenters can only speculate that the Port of Kalama is not eager to publicize its attempt to appropriate tens of millions of dollars of**

⁵ Exhibit 5, Pan-Pacific Energy Corp, *Port of Kalama Methanol Project Business Plan*, p.16 (December 2013).

⁶ Exhibit 6a, *Minutes of the Special Meeting of the Port of Kalama Commission*, p.4 (June 26, 2014); Exhibit 6b, *Minutes of the Regular Meeting of the Port of Kalama Commission*, p.6 (July 27, 2014) (Port Commissioners grant authority to the Executive Director to enter into agreements required by USDA for the Rural Development loan application); Exhibit 6c, *Correspondence between the USDA and the Confederated tribes of the Grand Ronde regarding a Rural Development loan for well development at the refinery site* (August, 2014).

⁷ Exhibit 7, Port of Kalama, *2015 TIGER Grant Application* (2015).

⁸ USDOT denied the Port’s 2014, 2015, and 2016 TIGER Grant applications, but the Port may, and likely will, apply to this funding source again.

⁹ Exhibit 8, *Minutes of the Regular Meeting of the Port of Kalama Commission*, p.3 (June 11, 2014) (Port Commissioners authorize BergerABAM to help prepare TIGER Grant application materials).

federal taxpayer money to build a private petrochemical refinery and export facility controlled by the Chinese government. Nevertheless, withholding such important information from state and federal regulators, and the public, in response to a direct question is inexcusable and calls into question the veracity of the rest of the Port's application.

4. The Port of Kalama's sediment characterization study is insufficient.

The Port of Kalama has not provided Ecology with reasonable assurances that dredging will not result in water quality standard violations, so Ecology must deny the Port's 401 Certification application for the methanol refinery and terminal. Contrary to the approved sampling plan and the operative guidance on sediment sampling, the Port's contractor only sampled sediments on the *surface* of the river bottom, instead of sampling a full range of the sediments to be dredged.¹⁰ The Port simply did not take a representative sample of the sediment it proposes to dredge and redistribute. A couple of grab samples from the surface of the river bottom tells Ecology almost nothing about potential contamination in the underlying sediments that will be removed by dredging (and potentially placed elsewhere in the river), or the sediments that would be exposed on the river bottom after dredging is finished. The Port's sediment sampling does not provide enough information for Ecology to be "reasonably certain" that dredging and spoils placement will not expose and redistribute contaminated sediments that will cause water quality standards violations. *Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wn.2d 568, 600 (2004). Until the Port provides better data characterizing the sediment to be dredged and the resulting river bottom, Ecology cannot issue the 401 Certification.

The Port and its contractor also followed outdated guidance when collecting and analyzing sediment samples. In July of 2016, the Army Corps, Ecology, and others put out updated guidance on how to sample and analyze sediments for compliance with Washington water quality standards.¹¹ Ecology should analyze the sufficiency of the Port's sampling plan and findings to ensure that those procedures conform to the latest guidance about sediment characterization.

5. The methanol refinery and export project will violate temperature water quality standards.

NWIW's project would contribute to violations of Washington's numeric water quality standard for summertime water temperature in the Columbia, which protect salmonid spawning, rearing, and migration. Washington set a standard of 20 °C for summertime water temperatures in the Columbia River. WAC 173-201A-602 (Table 602). Summertime water temperatures in the

¹⁰ See BergerABAM, *Dredged Material Characterization Report for the Kalama Manufacturing and Marine Export Facility Dock Dredging*, p.2 (March 27, 2015) (explaining that "material from the subsurface . . . was not collected").

¹¹ See: https://www.epa.gov/sites/production/files/2016-07/documents/sediment_evaluation_framework_for_the_pacific_northwest_2016.pdf

Columbia at the project site frequently exceed 20 °C, and Ecology and the Environmental Protection Agency (“EPA”) recently listed this entire reach of the Columbia River on the “303(d)” list of water-quality limited waterbodies.¹² Washington also provides that, if water temperatures exceed the 20 °C criterion *due to natural conditions*, a discharge may increase water temperature by up to .3 °C. WAC 173-201A-200(1)(c)(i). However, EPA determined that the Columbia’s summertime temperature exceedances are largely caused by humans, primarily by hydroelectric dams and global warming¹³—not “due to natural conditions” within the meaning of WAC 173-201A-200(1)(c)(i). Accordingly, *any* discharge of temperature over 20 °C into the Columbia at Kalama from NWIW’s project would likely contribute to a violation of the temperature water quality standards. NWIW’s project will almost certainly result in the discharge of warm water into the Columbia, in the form of process and cooling wastewater from the refinery, stormwater, engine cooling water from the methanol tankers and attendant vessels servicing the export terminal and vessels working on dock construction, and de-watering water from upland dredge spoils placement. Ecology cannot be “reasonably certain,” *Port of Seattle*, 151 Wn.2d at 600, that NWIW’s project will not contribute to violations of Washington’s temperature standards. Ecology should therefore deny Section 401 Certification.

Ecology employees overseeing Clean Water Act permitting for process water discharges from the methanol refinery have stated that NWIW is exploring whether and how to construct the refinery so as not to discharge wastewater into the Columbia River. Commenters are skeptical of the feasibility of such a proposal, and the Refinery JARPA does not suggest that NWIW is considering such an option. If NWIW were to make such a significant change to its proposal, a revised JARPA and new public comment period would be necessary for Ecology and the public to assess whether NWIW’s plan would provide reasonable assurances that the facility could meet water quality standards.

- b. Supplemental Comments on Section 401 Certification for the Kalama Lateral Pipeline.**
 - 1. Ecology should not certify the pipeline under Section 401 until legal issues surrounding FERC’s pipeline approval and 401 Certification are resolved.**

As an initial matter, Ecology should refuse to ratify FERC’s illegal issuance of a Certificate of Convenience and Necessity under the Natural Gas Act for the Kalama Lateral Pipeline before Ecology has decided whether to issue a Section 401 Certification for the pipeline. In the past, Ecology strenuously objected to such conduct by FERC in the context of the quite-

¹² Ecology, *Washington State Water Quality Atlas for 2015 303(d) List* (online at: <https://fortress.wa.gov/ecy/waterqualityatlas/map.aspx?CustomMap=y&RT=0&Layers=23,29&Filters=n,n,n,n>).

¹³ Exhibit 9, U.S. Environmental Protection Agency, *Draft Columbia/Snake Rivers Temperature TMDL* (July, 2003).

similar Bradwood LNG facility and pipeline.¹⁴ While Ecology did not appeal FERC’s order on the Kalama Lateral Pipeline on this basis, the Cowlitz County Cemetery District No. 6 is actively pursuing this claim as one reason for overturning FERC’s illegal order. Issuing the requested 401 Certification now would only embolden FERC to subvert future 401 Certification processes—and make Ecology’s decision on this particular 401 Certification look like a *fait accompli*.

2. Any 401 Certification must explain how pipeline construction will meet Washington’s water quality standards for turbidity.

Trenching through streambeds will likely release sediment and turbidity into the waterbodies crossed by the pipeline, potentially violating Washington’s water quality standards. As Northwest Pipeline admits, pipeline stream crossings can lead to “increased turbidity, sedimentation, streambed and stream bank erosion, [and the] release of chemical and nutrient pollutants from in-stream sediments” Pipeline JARPA, p.13. Washington has numeric water quality standards limiting the turbidity increases that can result from projects like the Kalama Lateral Pipeline. *See* WAC 173-201A-200(e).

Unfortunately, it is nearly impossible to tell from the JARPA and the Notice of Application which numeric turbidity standards apply at each waterbody crossing, or whether the proposed stream-crossing techniques are likely to result in Northwest Pipeline violating those standards.¹⁵ The Pipeline JARPA contains no information on what the applicable water quality standards are, or how they would be met. Instead, the Pipeline JARPA merely asserts—without further discussion or justification—that dam-and-pump and fluming construction techniques help “assure that in-stream construction activities comply with water quality standards for turbidity that have been established by the state to protect aquatic life and other beneficial uses.” Appx. D to Pipeline JARPA, p.1; Appx E. to Pipeline JARPA, p.1. The Pipeline JARPA, and appendices D and E, describe these waterway crossing techniques. But that emphasis is misplaced, because it appears unlikely that these techniques will be employed, as most of the trenched waterways are anticipated to be dry when construction occurs in early August. *See* Appx A. to Pipeline JARPA, Table 2.

Instead, the analysis should focus on the amount of turbidity that will result from stream trenching and pipeline construction sites when these streams begin to flow again in the fall and winter. The Pipeline JARPA does not appear to discuss this source of turbidity, its potential levels, or whether those levels could violate the turbidity standards codified at WAC 173-201A-200(e). Accordingly, the Pipeline JARPA does not provide “reasonable assurance” that the project will not violate the turbidity water quality standards. 40 C.F.R. § 121.2(3). The

¹⁴ Exhibit 10, Brief of Petitioner State of Washington, Department of Ecology to the Ninth Circuit in *Oregon et al. v. Federal Energy Regulatory Commission* (January 25, 2010).

¹⁵ As Commenters suggested above, this speaks to the need for a public comment period on a draft of Ecology’s 401 Certification—not just the application.

“reasonable assurance” standard requires that Ecology be “reasonably certain” that the activity will not cause violations of water quality standards. *Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wn.2d 568, 600 (2004). Ecology will need to supply substantially more, and more-detailed, information in its 401 Certification document to meet this standard with respect to pipeline construction, and the public should have an opportunity to comment on such information.

Conclusion

For the reasons stated above—and those described in Columbia Riverkeeper’s November 11, 2015, comments on 401 Certification—the proposed methanol refinery, export terminal, and pipeline appear likely to result in violations of Washington’s water quality standards. Ecology should therefore deny the requested 401 Certifications. Thank you for your attention to this matter.

Submitted by,



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On behalf of:

Columbia Riverkeeper
Center for Biological Diversity
Save our Wild Salmon
Oregon Physicians for Social Responsibility
Washington State Chapter of the Sierra Club

Exhibits

- Exhibit 1: Email from EFSEC Chair Bill Lynch to Keith Philips Regarding EFSEC Jurisdiction.
- Exhibit 2: Columbia Riverkeeper, *Petition to EFSEC for Declaratory Order re the Kalama Methanol Manufacturing and Export Facility*.
- Exhibit 3: Northwest Pipeline LLC, *Request for Extension of Time re Kalama Lateral Project*.
- Exhibit 4: Port of Kalama, *Second Amendment to Lease Agreement between NWIW and the Port of Kalama*.
- Exhibit 5: Pan-Pacific Energy Corp, *Port of Kalama Methanol Project Business Plan*.
- Exhibit 6a: *Minutes of the June 26, 2014, Special Meeting of the Port of Kalama Commission*.
- Exhibit 6b: *Minutes of the August 27, 2014, Regular Meeting of the Port of Kalama Commission*.
- Exhibit 6c: *Correspondence between the USDA and the Confederated tribes of the Grand Ronde regarding a Rural Development loan for well development at the refinery site*.
- Exhibit 7: Port of Kalama, *2015 TIGER Grant Application*.
- Exhibit 8: *Minutes of the June 11, 2014, Regular Meeting of the Port of Kalama Commission*.
- Exhibit 9: U.S. Environmental Protection Agency, *Draft Columbia/Snake Rivers Temperature TMDL*.
- Exhibit 10: Brief of Petitioner State of Washington, Department of Ecology to the Ninth Circuit in *Oregon et al. v. Federal Energy Regulatory Commission*.