



September 12, 2023

Dan Opalski, Deputy Administrator  
Region 10  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, Suite 155  
Seattle, WA 98101

*Via email only to: Opalski.Dan@epa.gov*

**Re: Failure of the Washington Energy Facility Site Evaluation Council to Comply with Public Notice and Comment Regulations for NPDES Permit Issuance (Permit No. WA00251511)**

Dear Dan:

We are writing to ask the U.S. Environmental Protection Agency (“EPA”) to instruct the Washington Energy Facility Site Evaluation Council (“EFSEC”), to withdraw National Pollutant Discharge Elimination System (“NPDES”) Permit No. WA00251511 until such time as it has fully complied with mandatory federal public notice and comment requirements.

On May 30, 2023, the EFSEC, which is authorized by EPA to issue NPDES permits to certain facilities in the State of Washington, issued a new NPDES permit to Energy Northwest’s Columbia Generating Station (“CGS”), formerly known as the Washington Public Power Supply System (“WPPSS”) No. 2. In issuing this permit, the EFSEC failed to comply with the requirements of 40 C.F.R. § 124.10(c)(1)(ix). This rule, pertaining to methods of public notice required for the issuance of NPDES permits, applies to state NPDES programs via 40 C.F.R. § 123.25. 40 C.F.R. §§ 123.25(28), 124.10(c).

These binding regulations specifically require that copies of public notices providing the opportunity for public comment to be sent to “[p]ersons on a mailing list developed by,” among other methods, those who request in writing to be placed on such a list and “persons for ‘area lists’ from participants in past permit proceedings in that area.” 40 C.F.R. § 124.10(c)(1)(ix)(A), (B). While Northwest Environmental Advocates (“NWEA”), the Northwest Environmental

Defense Center (“NEDC”), and Columbia Riverkeeper (“CRK”) do not specifically recall if they requested in writing to be placed on such a list, NWEA was a recipient of an email sent on January 31, 2014 from EFSEC for a previously proposed NPDES permit that stated: “You are receiving this correspondence because you have indicated that you are an interested party regarding the Columbia Generation Station.” Since that time, NWEA, NEDC, and CRK have not received any communication from EFSEC asking for written indication of continuing interest to which a failure to respond would have allowed EFSEC to delete the organizations from the mailing list for this facility’s NPDES permit. *See* 40 C.F.R. § 124.10(c)(1)(ix)(C). Since that time, our three organizations not only submitted a 37-page comment letter on the proposed 2014 NPDES permit but challenged the issuance of the September 30, 2014 issuance of the permit in state court on October 29, 2014. In other words, all three organizations have demonstrated more than ample interest in the CGS facility’s NPDES permit to warrant their being placed on a mailing list for purposes of inviting public comment on issuance of NPDES permits to Energy Northwest.

In contrast, the EFSEC description of its 2023 public involvement, set out in Appendix A of the required fact sheet, states only that “EFSEC will place a Public Notice of Draft on 2/19/2023 in the Yakima Herald-Republic and the Tri-City Herald to inform the public and to invite comment[.]” EFSEC, *Fact Sheet for NPDES Permit WA00251511* (Revised 4/7/2023) at 44. There is no reference to EFSEC’s having mailed public notices to persons on a mailing list as required nor did our three organizations receive such a notice. EFSEC received public comments from two sources, the permittee itself and the Washington Department of Natural Resources, communications with which are covered by other regulations. *See* 40 C.F.R. § 124.10(C)(1)(i), (iii). *Id.* at 62-63.

We look forward to EPA’s involvement in rectifying the illegal issuance of Permit No. WA00251511.

Sincerely,



Nina Bell, Executive Director  
Northwest Environmental Advocates  
nbell@advocates-nwea.org

Jonah Sandford, Executive Director  
Northwest Environmental Defense Center  
jonah@nedc.org

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Miles Johnson, Legal Director  
Columbia Riverkeeper  
miles@columbiariverkeeper.org

cc: Amy Moon, EFSEC Site Specialist (amy.moon@efsec.wa.gov)

Attachments:

Kali Wraspir, EFSEC, Email to Interested Parties re: Columbia Generating Station  
NPDES Permit Renewal (Jan. 31, 2014)

Letter from Nina Bell, Executive Director, Northwest Environmental Advocates; Marla  
Nelson, Legal Fellow, Northwest Environmental Defense Center; Miles Johnson, Clean  
Water Attorney, Columbia Riverkeeper to Jim La Spina, EFSEC, Re: Comments on  
EFSEC's Proposed NPDES Permit Reissuance for Energy Northwest's Columbia  
Generating Station (April 18, 2014)

*Northwest Environmental Defense Center, et al., v. EFSEC*, Petition for Review (Oct. 29,  
2014)

EFSEC, Fact Sheet for NPDES Permit WA00251511 (Revised 4/7/2023)

EFSEC, NPDES Permit Permit WA0025151 (issuance date May 30, 2023)