

September 21, 1995

Jason Zeller, EFSEC Manager  
Washington Energy Facility Site Evaluation Council  
P.O. Box 43172  
Olympia, WA 98504-3172

Re: Chehalis Combustion Turbine  
NPDES Draft Permit; Application No. 94-3.

Dear Mr. Zeller:

This letter constitutes Northwest Environmental Advocates' comments on the draft NPDES permit for the above-referenced facility. These comments are also submitted on behalf of Friends of the Earth (Northwest Office). We request that these comments be incorporated into the public hearing record of the evidentiary proceeding for the site certification application.

Any reference below to "Issue Papers" is a citation to the document "Final Issue Papers," 1992-94 Water Quality Standards Review, Oregon Department of Environmental Quality, June 1995, delivered to the Site Evaluation Council at the 7:00 PM, August 17 public hearing for the proposed Satsop combustion turbine project. The sections of this document related to temperature and dissolved oxygen are pertinent to this application.

I. PUBLIC COMMENT PROCESS

We are concerned that this public comment process is a waste of public resources, both those of the agency and the public which respond to it, because of changing permit conditions and a wholesale failure to meet regulatory requirements. In addition, since there is no need for power to justify the construction of this facility, this entire effort is without merit.

**A. Changing Permit Conditions**

Regulations implementing the federal Clean Water Act (CWA) require that a draft NPDES permit contain the effluent limits and conditions required by 40 CFR 122.44(d). 40 CFR 124.6(d)(4)(v). This should ensure that the public will not have to waste its time responding to draft permits

which fail to meet regulatory requirements in a wholesale fashion. Unfortunately, the proposed permit falls far short of these regulatory requirements.

Moreover, it is our understanding that the draft permit for, among other dischargers in the Upper Chehalis Basin, the City of Chehalis Sewage Treatment Plant (STP), may be changed in the fall of 1995 based on on-going negotiations with the Department of Ecology. Personal communication with Paul Pickett and Kahle Jennings, DOE. If this permit changes, the terms of the Chehalis CT permit may also be required to change, necessitating an additional public comment period.

#### **B. Inadequacy of Required Fact Sheet**

The public notice requirements promulgated under the Clean Water Act (CWA) include the opportunity for the public to obtain a copy of the draft permit and the fact sheet. 40 CFR 124.10(d)(1)(iv). Each draft NPDES permit must be accompanied by this fact sheet. 40 CFR 124.6(e). A fact sheet must include the following information: 1) the principle facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit; 2) a brief description of the type of facility or activity; 3) a brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions; 4) reasons why any requested variances or alternatives to required standards do or do not appear justified; 5) a description of the procedures for reaching a final decision on the draft permit; and 6) an explanation of the reasons why limitations to control toxic pollutants under Section 122.45(e) are applicable. 40 CFR 124.8.

The fact sheet prepared for this draft permit fails to put forth any "significant factual, legal, methodological and policy questions considered in preparing the draft permit." For example, the fact sheet does not present any factual information on the quality of the receiving water, including its "water quality limited" status under CWA section 303(d)(1). The fact sheet does not provide a "brief description of the type of facility or activity." 40 CFR 214.8(b)(1). It does not mention the on-going Total Maximum Daily Load (TMDL) process, the nature of the draft NPDES permits for major dischargers in the Basin, or the need for waste load allocations under this or any future TMDLs. It does not mention any statutory or regulatory

provisions other than vague references to "water quality-based" parameters and "water quality standards," which would mystify the average citizen.

The fact sheet does not even mention the state's antidegradation policy and therefore does not discuss how that policy is being implemented with regard to this draft NPDES permit. The antidegradation policy is a key method of implementing the primary goal of the Clean Water Act, namely to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." CWA section 101(a). It is also an important method of implementing the Act's interim goal of providing for the "protection and propagation of fish, shellfish, and wildlife and \* \* \* recreation in and on the water \* \* \*" CWA section 101(a)(2). Congress underscored the importance of the antidegradation policy in its 1987 amendments to the Clean Water Act. PUD No. 1 of Jefferson County v. Washington Department of Ecology, 114 S.Ct. 1900, 1905 (1994). If the application of the antidegradation policy to this permit is not a "significant policy question" needing to be addressed in the fact sheet than clearly nothing would qualify.

The fact sheet does not provide a description of the procedures for reaching a final decision on the draft permit as required. The Council's notice of a public hearing states that the public may petition the U.S. Environmental Protection Agency (EPA) Administrator to review conditions of the permit pursuant to 40 CFR 124.19. This citation does not appear to be consistent with the Council's own rules at WAC 463-38-063. It also does not describe the role of EPA or the Council in making a final decision on the permit, as required by the federal rules. Given the Council's particularly confusing process of issuing an NPDES permit in the context of the site certificate, there is all the more reason to adhere to the terms of this particular regulation.

The fact sheet provided to the public for this draft permit was itself labeled "draft." The sole purpose of a fact sheet is to accompany a draft permit, not a proposed permit or a final permit. Therefore, the use of the label "draft" by the Council suggests the substance of the fact sheet -- and the terms of the draft permit in its draft state -- were subject to change even at the time of its publication. This should not be the case but rather the fact sheet should contain information and analysis upon which the public may rely.

### **C. Information Lacking**

The Council's regulations spell out the required contents of applications: "The applicant shall provide detailed descriptions of the affected natural water environment, project impacts and mitigation measures and shall demonstrate that facility construction and/or operational discharges will be compatible with and meet water quality standards. \* \* \* The application shall set forth all background water quality data pertinent to the site, and hydrographic study data and analysis of the receiving waters within one-half mile of any proposed discharge location with regard to: Bottom configuration; minimum, average and maximum water depths and velocities; water temperature and salinity profiles; anticipated effluent distribution and dilution, and plume characteristics under all discharge conditions; and other relevant characteristics which could influence the impact of any wastes discharged thereto." WAC 463-42-322. Much of this information is not in the application, such as plume characteristics and information presented in the TMDL Study. Upper Chehalis River Dry Season Total Maximum Daily Load Study, No. 94-126, July 1994 (hereinafter "TMDL Study"). The application is riddled with errors in interpreting Washington's water quality standards and criteria (e.g., WAC 173-201A), as discussed below, rendering the information and analysis provided in the application wholly inadequate.

## **II. LEGAL REQUIREMENTS FOR THE ISSUANCE OF PERMITS**

### **A. Permits Prohibited**

EPA regulations prohibit the issuance of any permit "when the conditions of the permit do not provide for compliance with the applicable requirements of CWA, or regulations promulgated under CWA." 40 CFR 122.4(a). This includes "[w]hen the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states." 40 CFR 122.4(d).

Likewise, the regulations specifically prohibit the issuance of a permit for a "new source" or "new discharger" if the discharge from its operation will "cause or contribute to the violation of water quality standards." An applicant "proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by sections 301(b)(1)(A) and 301(b)(1)(B) of CWA, and for which the State or interstate agency has performed a pollutants load allocation for the pollutant to be discharged, must demonstrate, before the close of the public comment period, that: (1) There are sufficient remaining pollutant load allocations to allow for

the discharge; and (2) The existing dischargers into that segment are subject to compliance schedules designed to bring that segment into compliance with applicable water quality standards." 40 CFR 122.4(i).

## **B. Required Effluent Limitations**

Where NPDES permits are issued, EPA regulations require that the effluent limitations incorporated therein meet any additional standards and state requirements. 40 CFR 122.44(d). Specifically, "each NPDES permit shall include conditions meeting [w]ater quality standards and State requirements." Id. This section establishes the need for "any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under [other sections of the CWA] necessary to: (1) Achieve water quality standards established under section 303 of the CWA, including State narrative criteria for water quality." 40 CFR 122.44(d)(1).

These required effluent limitations "must control all pollutants or pollutant parameters (either conventional, nonconventional or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality." 40 CFR 122.44(d)(1)(i). In order to determine whether a discharge causes, has the reasonable potential to cause or contribute to an in-stream excursion above either narrative or numeric criteria, "existing controls on point and nonpoint sources, the variability of the pollutant or polluting parameter in the effluent \* \* \* and where appropriate, the dilution of the effluent in the receiving water" must be accounted for. 40 CFR 122.44(d)(1)(ii).

The Council's rules are similar: "In any case where an issued NPDES permit applies the effluent standards and limitations established in paragraph 1 of this section, the council shall make a finding that any discharge authorized by the permit will not violate applicable water quality standards and will have prepared some explicit verification of that fact. In any case where an issued NPDES permit applies any more stringent effluent limitation, based upon applicable water quality standards, a waste load allocation shall be prepared to ensure that the discharge authorized by the permit is consistent with applicable water quality standards." WAC 463-38-053(2).

The water quality standards referred to in these federal and state regulations are defined as the designated beneficial uses in combination with the numeric and narrative criteria to protect those uses and an antidegradation policy. 40 CFR 131.6. Numeric criteria adopted in water quality standards should be promulgated to protect the "most sensitive use." 40 CFR 131.11(a)(1). However, since this is not always possible, the task of evaluating whether standards have been met also requires an assessment of the impact a discharge will have on the beneficial uses. The U.S. Supreme Court decision in Jefferson County underscored the importance of protecting beneficial uses as a "complementary requirement" that "enables the States to ensure that each activity -- even if not foreseen by the criteria -- will be consistent with the specific uses and attributes of a particular body of water." Jefferson County, supra, at 1912. The Court explained that numeric criteria "cannot reasonably be expected to anticipate all the water quality issues arising from every activity which can affect the State's hundreds of individual water bodies." Id.

### **C. Antidegradation**

EPA regulations implementing CWA section 303 require that the State of Washington's "antidegradation policy and implementation methods shall, at a minimum, be consistent with the following: (1) Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected." 40 CFR 131.12(a)(1). Only where the quality of waters exceed levels necessary to support the most sensitive biological beneficial uses is the State allowed to degrade water quality in order to accommodate important socioeconomic development. 40 CFR 131.12(a)(2). Even where these high quality waters exist, a situation present in this case only for some pollutants and parameters, the regulations require that the State assure water quality adequate to protect existing uses fully. 40 CFR 131.12(a)(2). Where the quality of the water is not higher than the standards, the regulations prohibit additional pollutant loads.

Washington's antidegradation regulation is somewhat less clear, but consistent: "Existing beneficial uses shall be maintained and protected and no further degradation which would interfere with or become injurious to existing beneficial uses shall be allowed." WAC 173-201A-070(1). This policy is a part of Washington's water quality standards, which, in turn, are referenced by Council rules. See e.g., WAC 463-38-061.

### **III. THE CHEHALIS AND THE DISCHARGE**

## A. The Chehalis River

The Department of Ecology (DOE) has made, and U.S. EPA has approved, a finding that segment No. WA-23-1020, of the Chehalis River from river mile 65.8 (Scammon Creek) to river mile 75.2 (Newaukum River), into which the Applicant proposes to discharge, does not meet the state water quality standards for temperature and dissolved oxygen (DO) -- i.e., is "water quality limited" -- based on exceedences of the numeric criterion. Department of Ecology, 1994 303(d)(1) list. In addition, the Applicant notes that there are significant exceedences of both chronic and acute criteria for other pollutants in the vicinity of the City of Chehalis municipal water supply intake (on the east bank of the Chehalis River downstream of the confluence with the Newaukum River). Application at 3.3-20. Specifically, the chronic criteria are violated for cadmium, copper, lead, mercury and zinc. Id. The acute criteria are violated for cadmium, copper, silver and zinc. Id. Some of the parameters are startlingly high. For example, the recorded concentration of copper is 200 ug/l, compared to an acute criterion of 5.6 ug/l. Application at Table 3.3-2a. These studies were performed by the City, apparently recently. Personal communication with Kahle Jennings. Since the Applicant has provided no information upon which the Council can conclude that the segment is not water quality limited for these pollutants, it must treat them as such in determining whether the permit can be issued, and establishing the effluent limits if, in fact, issuance of the permit is not prohibited. The application references supporting data from the U.S. Geological Survey for concentrations of cadmium, lead, mercury and silver downstream at the Porter monitoring station. Application at 3.3-20.

The application provides little data on temperatures for this segment of the Chehalis. It merely states that the "instream temperature criteria would not be exceeded within the allowed mixing zone." Application at 3.3-28. If this is true, than no mixing zone should be allowed for thermal pollution coming from this source. Since, however, the application goes on to state that the discharge temperature will range from 29°C to 21°C, and make assumptions about the existing temperature becoming the criterion (which a discharger can then warm up to 0.3°C), clearly the entire analysis is flawed. See e.g., Application at 3.3-28 and Table 3.3-3. The applicant should provide data on actual temperatures in the Chehalis River and present an analysis showing that the discharge will not cause or contribute to water quality standards violations.

This information exists. For example, the TMDL Study notes that

50 percent or more of temperature measurements in the Upper Chehalis Basin during the dry season exceeded the criterion. Worse, in the "Centralia reach," which encompasses the segment into which the Chehalis plant proposes to discharge, the TMDL Study concluded that "almost two-thirds of the measurements exceed[ed] the 18°C criterion." TMDL Study at 21.

### **B. The Proposed Discharge**

The application presents very little information on the temperature of the discharge except to say that it will vary between 29°C and 21°C. The application does not explain how the facility will be able to keep its discharge within temperature limits. For example, there is no information provided on the temperature of the recycled wastewater which will be used by the plant. The application makes no assessment of the impact of the discharge to the most sensitive beneficial uses of the Upper Chehalis. The closest the Applicant gets is a statement that the purchase or lease of others' water rights could be used "if the loss of water quantity is judged to have a significant impact on the aquaculture of the Chehalis River." Application at 3.3-10. The protection of aquaculture is, frankly, a non issue as compared to protection of aquatic species indigenous to the river.

### **IV. THE PROPOSED DISCHARGE VIOLATES REGULATIONS**

No evaluation has been supplied by the Applicant or the Council that the proposed discharge will comply with Washington's water quality standards including: the numeric criteria, protection of the most sensitive beneficial uses, and the antidegradation policy.

### **A. The Numeric Criterion & Waste Load Allocations**

The Council has not yet made the findings and "explicit verification," required by its own rules, that the proposed discharge will not violate water quality standards. In fact, the cover memorandum for the NPDES materials states that the preliminary determination made by the Council was based on technology-based requirements. Memorandum from Allen Fiksdal, EFSEC Project Manager to Interested Persons re: Chehalis Generation Facility NPDES and PSD Permit - Tentative Determination, August 17, 1995 at 2. The fact sheet states that the water quality-based discharge limits were calculated on the basis of the mixing zone using a dilution factor of 2.25. Fact sheet at 4. Neither the Applicant nor the Staff has shown that the proposed discharge will not "cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard," as required by EPA regulations



governing the issuance of NPDES permits. Such an evaluation requires an analysis of pollutant loadings. Instead, the Applicant has merely performed a dilution analysis, based on a highly flawed interpretation of the Clean Water Act.

The only source of information on evaluating effluent limits and loadings is the application. This is a highly problematic source of information because the Applicant fundamentally misunderstands the water quality-based permitting under the Clean Water Act. This is best reflected in its startling statement that "[s]ince natural conditions in the river exceed the assigned criteria, river conditions constitute the water quality criteria [and therefore] the effluent is within compliance concentrations." Application at 3.3-20. A similar statement is made with regard to temperature. Application at 3.3-28. While it is true that where natural conditions are of a lower quality than assigned criteria, the natural conditions constitute the criteria, the Applicant errs in assuming that existing or background conditions in the Upper Chehalis are "natural." Natural conditions are clearly defined as "surface water quality that was present before any human-caused pollution." WAC 173-201A-020. Neither the Department of Ecology nor the Siting Council has made a finding that either the DO or temperature levels in the Chehalis are natural. See e.g., the TMDL Study. And the Applicant provides absolutely no basis for either agency to make a determination that the levels of cadmium, copper, lead, mercury, zinc and silver are "natural" other than its own bald statement. There are certainly probable sources of metals upstream of this sampling site. See TMDL at Table 1.1, Permitted Dischargers. The entire analysis in the application is therefore worthless.

This peculiar aspect of the application results in extremely abbreviated discussions of pollution controls such as the following: "Four potential mitigation measures have been developed to protect the Chehalis River from significant flow quantity impacts during low flow conditions: \* \* \* Metals removal system to mitigate quality issues." Application at 3.3-28. Meeting water quality standards is not mitigation; it is the law. Moreover, the statement that metals removal can be "brought on-line when needed based on waste stream monitoring and river flow conditions" is not what is contemplated by the implementing regulations of the Clean Water Act as presented above. Application at 3.3-28. Again, the law requires these determinations to be made in advance of issuance of a permit if for no other reason than the permit, once issued, acts as a shield behind which a permittee can hide from those desiring to protect the public waterways and their beneficial uses.

## 1. Temperature

The proposed permit condition of a discharge temperature of 18°C at the edge of the mixing zone is the same as the numeric criterion for the receiving stream. There are several reasons why, on its face, this thermal load will cause and/or contribute to violations of the numeric criterion. First, an allocation under the Total Maximum Daily Load (TMDL) will require thermal loads to be less than the numeric criterion because the Applicant is only one of many point and non-point sources contributing thermal loads in the watershed. Under a TMDL, no additional thermal load should be allowed unless and until there are other sources of thermal loading which are in the process of being reduced. Second, the statute requires TMDLs of all kinds, including thermal TMDLs to include a "margin of safety," and therefore the load allocations would similarly include a margin of safety. CWA 303(d)(1)(D). Assuming no other sources of thermal loading, allowing the discharge temperature to equal the numeric criterion would not include a margin of safety. Third, allowing the discharge to be 18°C does not take into account the fact that the numeric criterion is too warm to protect populations of cold-water fish which are both existing and designated beneficial uses in the Chehalis River.

Temperature criteria excursions are caused by a variety of point and non-point sources of thermal loads in addition to the both natural and anthropogenic sources including, for example: solar radiation from changed river morphology throughout the watershed, reduced and slowed flows, air temperatures, and reduced shading. In order to ensure that the temperature criterion is met, all sources of thermal loading must be restricted. The regulations require that, in establishing the effluent limits for this project, the contributions and controls on these other sources be evaluated. 40 CFR 122.44(d)(1)(ii). There is no other way in which to assure that the discharge from this project will not cause or contribute to violations of water quality standards.

The mere fact that a discharge is at or lower than the temperature criterion is not sufficient to constitute an appropriate waste load allocation. Absent more analysis than has been provided by either the Applicant or the Council's consultants, there is no assurance that the proposed discharge temperature will not in fact cause, at times, and contribute, at others, to the violation of the state's water quality standard for temperature.

## 2. Effect of Temperature on Other Parameters

Warmer temperatures have a negative effect on DO levels. DO levels in this segment of the Chehalis River are so marginal that the TMDL study proposes to grant no wasteload allocations (WLA) to point sources in this reach and no load allocations (LA) to nonpoint sources. TMDL Study at 83. The applicant should be required to assess the contribution of its thermal load to existing DO problems and to the difficulties involved in implementing the TMDL for this reach. For example, Oregon's proposed new temperature standard prohibits any measurable increase in water temperature where DO concentrations are within 0.5 mg/l of the DO criterion. Dissolved Oxygen Issue Paper, supra, at 4-8. More specifically, the Siting Council should evaluate the impact of increased thermal loads in the highly sensitive area of the plant site on thermal gradients (thermoclines) that increase problems with oxygen mixing (stratification). For a full discussion of this phenomenon with regard to the area between rivermiles 67 and 71 of the Chehalis, see the TMDL Study at 40.

According to Ecology, high temperatures also reduce the capacity of the Chehalis River to assimilate ammonia and CBOD without degrading DO. TMDL Study at 81. The agency concludes that "[s]uccessful implementation of a phased TMDL for temperature may allow for increased loading of ammonia and CBOD" leading to the obvious conclusion that thermal controls on point sources are not only desirable but required. Id.

### 3. Other Parameters

There is an apparent conflict between proposed limits for free available chlorine (0.50 mg/l daily maximum; 0.20 mg/l daily average) and "no detectible amount" of total residual halogens; chlorine is one of the halogens, along with bromine, fluorine, and iodine. In addition, if there is to be a separate limit for chlorine discharged, it should be for the total residual chlorine and not simply the free available fraction. There is no great difference between the toxicity of free available chlorine and the chloramines that also result from the chlorination process. This is recognized by the Department of Ecology toxicity limits for total residual chlorine.

Effluent limits for the parameters copper, cadmium, zinc, lead - - which the Applicant concedes are present in the receiving stream far in excess of water quality criteria -- must be demonstrated not to cause or contribute to water quality standards violations. The Applicant's analysis that the existing levels become the criteria and that effluent concentrations not greater than these new "criteria" are acceptable is a gross misinterpretation of the Clean Water Act.

Therefore, the analysis provided by the Applicant on the acceptability of its proposed effluent concentrations is not an appropriate basis upon which the Council can make the necessary determinations. Application at Table 3.3-2a. In fact, even if the levels were natural and therefore became the criteria, no additional loadings would be allowed. The fact that the concentration of a discharge is the same as the receiving stream or the criterion for a particular pollutant is irrelevant because it ignores the central issue of loadings, required by the Act. Therefore, the fact sheet's explanation that the "water quality-based" discharge limits have been calculated on the basis of the City of Chehalis' mixing zone are indication enough that the water quality-based analysis required for this draft permit has not yet been done and the permit cannot be issued. Fact Sheet at 4.

#### **B. Protection of Beneficial Uses**

Washington's numeric water quality standard for temperature applicable to Class A streams, such as the Chehalis, is inadequate to protect the designated beneficial uses present. The Council cannot simply apply the 18°C criterion in the temperature standard, but is required by law to consider the specific needs of the existing beneficial uses of salmonid stocks in the Chehalis in order to determine an appropriate thermal load allocation for this source.

The Chehalis River downstream of the proposed discharge is used by a large number of cold-water fish including spring and summer run chinook, summer steelhead, fall chinook, coho, chum, winter steelhead and sea-run cutthroat. Personal communication with Susan Balikov, The Wilderness Society, Seattle office. The temperatures needed to protect some of the life cycle stages of these cold-water fish are significantly colder than the 18°C (65°F) numeric criterion adopted by the Department of Ecology.

Salmonid respond to warmer temperature differently depending upon, among other variables, the stage of the life cycle in which they are exposed. Appropriate temperatures must be established based on the life stage with the most restrictive temperature requirements occurring at any given time of year. Temperature Issue Paper, supra, at 2-7. The chinook, which have a spring, summer and fall run on the Chehalis, illustrate the shortcomings of the numeric criterion due to the life cycle stages that occur during the low flow, high temperature summer months. Fall chinook migrate inward to spawn in the Chehalis River from August through September. Inland Fishes of Washington, Wydoski and Whitney, University of Washington Press, 1979, at 59. Spring and summer chinook do not spawn in the

Chehalis but use it as a migration corridor from late May to early June, spawning in July through September. Id. Coho migrate upstream beginning in August with juveniles spending one year in the river prior to outmigration. Temperature Issue Paper, supra, at 2-10.

By comparing these life cycle stages to the temperature needs of the species one can evaluate the impacts of the proposed discharge in addition to the current quality of the receiving water. For example, the holding of pre-spawning ripe adult chinook females due to migration barriers created by high temperatures increases their susceptibility to disease, the same diseases which become highly infectious and virulent above 15.5°C. Temperature Issue Paper, supra, at 2-7. The exposure of ripe adult females to this same temperature causes "pronounced" adult mortality. Id. Similarly, coho, which use the Chehalis for spawning and rearing, require a migration temperature and juvenile rearing temperature of 15.6°C and 14.6°C respectively. Id. at 2-11. The State of Oregon's proposed new temperature criterion for salmonid spawning, egg incubation and fry emergence is 12.8°C (55°F). Id. at 4-7. As discussed above, the Council is required under 40 CFR 122.44 and Jefferson County to fully evaluate these impacts prior to issuing a draft permit and must include effluent limitations to protect these uses in permit conditions.

### C. **Antidegradation Policy**

According to the Washington Department of Ecology, the primary NPDES permitting authority in the state, the antidegradation policy of its own water quality standards is regularly ignored. In a memorandum accompanying a questionnaire sent out to participants in the state's 1995 Triennial Review of Water Quality Standards, DOE staff concede that: "While the state has had antidegradation requirements for a very long time, these requirements have not been effectively implemented in actions of the department." Antidegradation Implementation Plan, Questionnaire Number One, Summary Discussion, Surface and Ground Water Quality Management Unit, DOE, March 14, 1995 at ii. Notwithstanding this admission, EPA and state regulations remain binding upon this draft NPDES permit.

NWEA is unable to comment upon the application of the antidegradation policy to this draft permit because no evaluation has been provided. We have unable to find a single reference to the policy in the application, the fact sheet, the cover memorandum and the draft permit. At a bare minimum, correct implementation of the required antidegradation policy

necessitates, at the outset, its application.

The antidegradation policy precludes further discharges of loads of pollutants for which the waterbody is water quality limited in the absence of an implemented plan to bring the waterbody into conformance with the standard. This is because the uses are by definition not fully supported if the numeric criterion has been violated and the water has been deemed "water quality limited." Where the receiving stream is water quality limited, no additional pollutant loads can be allowed unless there are other loads of the same pollutants which are being reduced sufficient to leave assimilative capacity available for use.

#### **D. Use of Water for Dilution of Mass Loads**

Dilution of effluent loads prior to discharge is implicitly prohibited by the requirement that permits contain mass load limitations for all pollutants except pollutants which cannot appropriately be expressed by mass. 40 CFR 122.45(f)(1). The Council's rules acknowledge this requirement: "In the application of effluent standards and limitations, water quality standards and other legally applicable requirements pursuant to paragraphs (1) and (2) hereof, each issued NPDES permit shall specify average and maximum daily quantitative or other appropriate limitations of the level of pollutants in the authorized discharge. The average and maximum daily quantities must be made by weight except where the parameters are such that other measures are appropriate." WAC 463-38-053(3). "Other measures" does not mean that dilution of loads prior to discharge is an acceptable practice for those pollutants which are not measured by weight. It is not clear from the application, the fact sheet or the permit how the discharge of the proposed Chehalis CT project and the City of Chehalis STP are being evaluated other than the fact that the intent is to share the outfall. Dilution of one or the other's discharge is prohibited. Moreover, it is not clear how the monitoring requirements of the proposed permit will account for the individuality of the two facilities.

#### **E. Mixing Zone Analysis Inadequate**

The proposed permit conditions include an effluent dilution zone. Draft NPDES Special Condition S1(B). Water quality standards, including toxicity limits for constituents in the Chehalis CT Project discharge, must be met at the boundaries of the specified dilution zone. Calculations to demonstrate that proposed discharge limits will satisfy dilution zone requirements are not presented. Moreover, the Applicant states that the discharge will exceed acute toxicity in the mixing zone

for cadmium, copper, and zinc. Application at 3.3-25. Yet no analysis is presented as required by WAC 173-201A-100(8) (Mixing Zones) particularly with respect to zones of initial dilution where acute criteria may be exceeded. In this context, the Applicant also mysteriously concludes that temperature is "non-regulated." See e.g., Table 3.3-3a.

### Conclusion

This draft permit does not meet federal, Washington Department of Ecology or the Council's own regulations for permit conditions. Therefore, the Council is prohibited from issuing the draft permit at this time. It is not sufficient, in the words of the draft fact sheet, for the Council to claim that it and the Applicant "will take necessary steps to ensure discharges are consistent with water quality standards." Fact sheet at 5. It is necessary that the Council take those steps now, at the time of permit issuance. The process for obtaining public comment on this draft permit has also not complied with state and federal requirements. Moreover, it appears that permit conditions may be dependent upon the City of Chehalis permit, which is still being evaluated and changed, making this entire public comment process a waste of public resources. If the Council chooses to reissue the draft NPDES permit for public notice and hearing -- a necessary prerequisite to attempting to issue a final permit to this project -- it must first assure itself that members of the public and non-profit entities will not be, once again, be wasting their time.

We look forward to your response to our comments.

Sincerely,

Nina Bell  
Executive Director  
Northwest Environmental Advocates

for: Friends of the Earth, Northwest Office