



NORTHWEST ENVIRONMENTAL DEFENSE CENTER

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(FOR ACTION)*

RECEIVED

OCT 17 2014

Oregon DEQ
Office of the Director

October 17, 2014

Oregon DEQ
811 SW 6th Ave.
Portland, Oregon 97204

Dick Pedersen
Director, Oregon DEQ
811 SW 6th Ave.
Portland, Oregon 97204

Re: Air Contaminant Discharge Permit for the Columbia Pacific Bio-Refinery, Permit No. 05-0023-ST-01, Petition for Reconsideration

Mr. Pedersen,

Enclosed please find a petition for reconsideration submitted by the Northwest Environmental Defense Center, Center for Biological Diversity, Neighbors for Clean Air, Sierra Club, and Columbia Riverkeeper. Please feel free to contact me with any questions at msnelson@nedc.org or 503-768-6726.

Sincerely,

Marla Nelson
Staff Attorney

best of Petitioners' knowledge, Cascade Kelly has never operated the site as an ethanol manufacturing facility.

On February 28, 2014, DEQ proposed for public review and comment a draft standard ACDP (No. 05-0023-ST-01) for the Clatskanie oil terminal. DEQ also held a public hearing on April 3, 2014 at Clatskanie High School. Given multiple requests during that hearing and written requests submitted to the agency, DEQ extended the public comment period to May 5, 2014. Petitioners provided oral testimony at the public hearing and timely submitted extensive written comments to DEQ. The comments outlined numerous flaws in the permit application and requested that DEQ deny Cascade Kelly's application for a new ACDP (No. 05-0023-ST-01), revoke the previous ACDP (No. 05-006-ST-01), and undertake the analysis required by the Clean Air Act. Over Petitioners' objections, on August 19, 2014 DEQ issued the new standard ACDP and provided a response to public comments.

DEQ should reconsider its decision to issue the ACDP to Cascade Kelly for several reasons. First, DEQ made substantial revisions to the ACDP after the close of public comment, based on information that was unavailable during the public comment period. Second, to the extent that DEQ failed to address critical issues raised by Petitioners, the agency's analysis in its response to comments, *see* August 19, 2014, DEQ Response to Comments (hereafter Response to Comments), does not justify the issuance of the ACDP. Finally, Cascade Kelly's Clatskanie oil terminal has and will continue to have serious air quality impacts that the ACDP issued by DEQ does not account for. Because the Clatskanie oil terminal is a new federal major source, DEQ failed to conduct the necessary analysis and issued the incorrect permit in violation of federal and state law. DEQ must require Cascade Kelly to seek a federal Prevention of Significant Deterioration (PSD) permit rather than the standard ACDP.

NATURE OF PETITIONERS' INTEREST

Petitioner Northwest Environmental Defense Center (NEDC) is a public, charitable non-profit organization incorporated under the laws of Oregon and recognized by the Internal Revenue Service as a tax-exempt organization under Section 501(c)(3). NEDC works to protect the environment and natural resources of the Pacific Northwest by providing legal support to individuals and grassroots organizations with environmental concerns, and engaging in litigation independently or in conjunction with other environmental groups. NEDC is regularly involved in efforts to maintain or enhance the air and water quality of the Pacific Northwest by serving as a watchdog over DEQ. Student volunteers regularly comment on proposals for new permits and permit modifications, monitor current permits in search of violations, and monitor sources of pollution to ensure compliance with permitting requirements.

Petitioner Center for Biological Diversity is a national, nonprofit conservation organization with more than 775,000 members and online activists dedicated to the protection of endangered species and wild places. At the Center we work to stem the tide of dirty fossil fuel energy and its negative impacts on wildlife, our members, and the fragile ecosystems upon which we all depend. Cascade Kelly's failure to comply with environmental laws in its efforts to transport crude in the U.S. is a grave concern and threatens to harm our members and the natural resources they cherish.

Petitioner Neighbors for Clean Air (NCA) was founded in 2009 by residents of Northwest Portland who were concerned about the presence of air toxics in their local communities. Since its founding in Northwest Portland, NCA has expanded the scope of its mission. NCA is dedicated to helping communities around Oregon understand and address the effects of air pollution, especially hazardous air pollutants, in their neighborhoods.

Petitioner Sierra Club is the nation's largest environmental organization. Founded in 1892 by John Muir, Sierra Club now has more than two million members and supporters. Sierra Club has worked to ensure protection of the nation's wilderness by helping to pass the Clean Air Act, Clean Water Act, and Endangered Species Act. Sierra Club now focuses on leading the charge to move away from dirty fossil fuels that cause climate disruption and toward a clean energy economy.

Petitioner Columbia Riverkeeper's ("Riverkeeper") mission is to restore and protect the water quality of the Columbia River and all life connected to it, from the headwaters to the Pacific Ocean. Riverkeeper represents over 8,000 members and supporters in Oregon and Washington and regularly comments on decisions impacting water quality, salmon habitat, and air quality. Riverkeeper's members boat, fish, and swim in the Columbia River. Many of Riverkeeper's members and supporters live, recreate, and work near and downstream of Cascade Kelly's facility.

Petitioners are entitled to judicial review under ORS § 183.484 because they submitted comments during the public participation process, and are otherwise adversely affected or aggrieved by DEQ's order issuing the ACDP for the Clatskanie oil terminal. DEQ's issuance of the ACDP to Cascade Kelly has an adverse and practical effect on Petitioners' and Petitioners' member's use and enjoyment of the areas surrounding the Clatskanie oil terminal, and on Petitioners' organizational interests. Petitioners are therefore authorized under OAR 137-004-0080, OAR 340-011-0009, and OAR 340-218-0210 to file the instant Petition for Reconsideration with DEQ. Petitioners retain the right to seek judicial review pursuant to ORS § 183.484.

Pursuant to ORS § 183.484, a petition for reconsideration of an agency order must be filed within 60 days of the date of the order. DEQ issued the ACDP on August 19, 2014. Filed on October 17, 2014, Petitioners' Petition for Reconsideration is timely.

GROUNDINGS FOR RECONSIDERATION

I. Given substantial revisions to the permit terms based on information not disclosed during the public comment period, DEQ must provide a new opportunity for public comment.

Under Oregon law, notice requirements are designed to (1) "inform the interested public about intended agency action," and (2) "trigger[] the opportunity for an agency to receive the benefit of the thinking of the public on the matters being considered." *Bassett v. State Fish and Wildlife Comm'n*, 27 Or. App. 639, 642 (Or. App. 1976). Here, DEQ flouted the intent of

Oregon's notice and comment procedures by substantially revising the terms of the ACDP after the close of the public comment period, preventing the public from weighing in on critical aspects of the permit's substance.

Since notice and comment procedures are meant to inform the public of agency action before it occurs, changes to an agency action after the close of public comment period may sometimes trigger the need for an additional comment period. The main question is whether the final agency action is a logical outgrowth of the action proposed during notice and comment. "The test for a 'logical outgrowth,' variously phrased, is whether a reasonable commenter should have anticipated that such a requirement would be promulgated, or whether the notice was sufficient to advise interested parties that comments directed to the controverted aspect of the final rule should have been made." *First American Discount Corp. v. Commodity Futures Trading Com'n*, 222 F.3d 1008, 1015 (D.C.Cir. 2000) (internal citations omitted). In the context of air permits, EPA has required a new round of public comments where additions to the permit after the close of public comment resulted in substantial new questions about the permit. *See In re: Indeck-Elwood, LLC*, PSD Permit No. 197035AAJ; PSD Appeal No. 03-04 (decided Sept. 27, 2006) (concluding that because "Condition 9 clearly changes the substance of the PSD permit, allowing for construction of a facility that is physically different than the one permitted, and which may potentially have different emission characteristics," the new permit provision was "a significant addition to the permit that, at a minimum, raises substantial new questions about the permit, and therefore IEPA should have reopened or extended the comment period to subject this condition to public comment.").

DEQ added over three pages of new permit provisions to the final authorized ACDP after the close of public comment. *Compare* DEQ Public Notice – Hearing: Proposed air quality permit for Columbia Pacific Bio-Refinery, pages 21-22 (pages 7-8 of proposed ACDP), *with* ACDP No. 05-0023-ST-01, pages 8-11 (adding provisions 2.5(e) through 2.5(h)). The provisions impose pressure test requirements for marine vessels. The new terms render the ACDP substantially different from the one provided for public comment by identifying standards; requiring testing, documentation, and monitoring; defining key terms; and defining the enforceability of those terms. The provisions allow Cascade Kelly to independently choose among three types of pressure or leak tests to demonstrate vapor tightness of a marine tank vessel. These tests, and their corresponding assumptions, form the basis for a significant portion of DEQ's calculations regarding the projected emissions from the facility. As a result, these significant changes to the permit required a new round of public notice and comment.

In *Natural Resources Defense Council v. United States Environmental Protection Agency*, the Ninth Circuit concluded that where an agency substantially revises the terms of a permit after the close of the public comment period and bases such change on information the agency did not disclose during the public comment period, the proper course of action is for the agency to provide an additional opportunity for public comment. 279 F.3d 1180 (9th Cir. 2002). This is precisely what occurred here. DEQ made substantial revisions to the permit based on information that was not available during the public comment period. The agency then failed to identify or mention these changes in its response to comments. *See* Response to Comments, page 18 (explaining that "DEQ intends to issue the CPBR permit with the following noted

modifications,” and omitting the substantial additional provisions in sections 2.5(e) through 2.5(h)). Thus, DEQ should provide an additional opportunity for public comment.

II. DEQ should reconsider the issuance of the ACDP because the Clatskanie oil terminal is a new federal major source that requires a preconstruction permit.

DEQ’s ACDP authorized the construction and operation of a new federal major source of emissions without the proper type of permit, in violation of the Clean Air Act and Oregon’s laws. Emissions of air pollution authorized by this permit will exceed the regulatory triggering threshold for a Prevention of Significant Deterioration (PSD) permit as required by 42 U.S.C. §§ 7475(a), 7479(1), and OAR 340 Division 224.

a. DEQ failed to consider the true capacity of the “source” in issuing the permit.

The term “source” or “facility” under the Clean Air Act defines the equipment, buildings, land, etc. under common ownership or control that is regulated under the Act for purposes of air permitting. In Oregon a “source” is defined as:

any building, structure, facility, installation or combination thereof that emits or is capable of emitting air contaminants to the atmosphere, is located on one or more contiguous or adjacent properties and is owned or operated by the same person or by persons under common control. The term includes all pollutant emitting activities that belong to a single major industrial group (i.e., that have the same two-digit code) as described in the Standard Industrial Classification Manual, (U.S. Office of Management and Budget, 1987) or that support the major industrial group.

OAR 340-200-0020(136). Under this definition those activities that fall under the same SIC code or industrial grouping or that support one another and are commonly controlled are permitted together in one air permit. In issuing the air permit to Cascade Kelly for the Clatskanie oil terminal, DEQ misapplied the definition of “source” under Oregon’s Clean Air Act.

i. DEQ failed to consider the full capacity of the existing source.

Cascade Kelly operates the Clatskanie oil terminal. The entire facility was originally dedicated and permitted to grain processing and ethanol manufacturing. *See* ACDP 05-0006-ST-01. The facility was then bifurcated between the ethanol “source” and the crude oil “source.” At the behest of DEQ, Cascade Kelly applied for a new, separate ACDP, stating that “[s]ubsequent to completing the proposed construction activities, two independent facilities will be permitted to operate: an ethanol production facility and ethanol marine loading terminal (operating under existing permit 05-0006) and a marine liquids loading terminal (operating under the new ACDP requested in this application).” *See* August 23, 2013, Cascade Kelly, Application for Standard Air Contaminant Discharge Permit For Cascade Kelly Holdings, LLC dba Columbia Pacific Bio-Refinery.

However, when it noticed the ACDP under review here for public comment, DEQ considered all of the equipment and facilities at the Clatskanie oil terminal to be one source. That source now has one air permit for all of its transloading operations: the new ACDP authorizes marine vessel loading and unloading of both petroleum and ethanol. As DEQ explained:

the two activities lie within different SIC major groups (51 and 28); therefore, pursuant to Oregon rules the permittee is establishing a new source and is required to obtain a new permit to operate and build out the facility*. If or when the ethanol manufacturing facility commences operation and following issuance of this permit, some equipment and activities (storage tanks TK6105 & TK6106, barge loadout operations, associated emission controls) will be shared by the two permitted facilities.

*Note: This new permit and review report identify multiple SIC codes (5171, 5169 and 4491) with the new transloading facility that are associated across different SIC major groups (51 and 44). This is for activity identification purposes only. *Since the SIC 4491 activity is supporting of the SIC 5171 and 5169 activities the transloading facility is considered a single source under Oregon rules.*

DEQ Response to Comments at 4 (emphasis added). As a result, DEQ needed to consider the capacity of the entire facility or source in issuing the air permit under review. The agency failed to do so and thus, has reached erroneous emissions calculations.

For example, as DEQ acknowledges, “the facility will have a storage capacity greater than 300,000 barrels,” Response to Comments at 12, or a storage capacity of 12,600,000 gallons. Typically, this capacity would lead to a major federal source designation because of the capacity of the source to emit volatile organic compounds (VOCs). However, DEQ assumed that transloading of crude to vessels at the one dock at the facility would serve to limit emissions from the source. Even assuming the facility intends to operate with only one dock (which is dubious), DEQ’s assumption works to limit only the emissions from loading crude from storage to vessels. The single dock assumption does not limit the emissions from offloading of crude from trains to the tremendous storage capacity at the facility. Indeed, currently, at most 17 trains have been off-loaded per month at the facility – according to records provided by Cascade-Kelly’s attorneys to DEQ. See Exhibit 1 (attached) (compiled train records). Based on current rail conditions, the facility can be visited by up to 24 trains a month – *i.e.*, seven more trains than have been off-loaded in 2013 or 2014 at the facility. In light of the storage capacity at the facility and the apparent infrastructure that allows increased train traffic to the facility, DEQ erred in not considering greater off-loading and storage of crude at the facility.

To the contrary, DEQ only considered use of the tanks and other equipment at the facility designated as part of the “crude source” instead of *all the tanks and equipment* at the facility. (This includes what *was* designated as the crude oil source and what was designated as the ethanol source, but is now one “source” for purposes of the Clean Air Act.) In other words, there is a multitude of equipment at the Clatskanie oil terminal that never entered into DEQ’s

calculations of the source's potential to emit. As a result, DEQ erred in how it applied the definition of source in issuing the air permit under review.

Moreover, statements made by DEQ in the final permitting documents indicate there was confusion at the agency as to whether Cascade Kelly would have one or two air permits for the various operations at the Clatskanie oil terminal. As discussed above, DEQ notes on the one hand that all of the activities at the facility support one another and for that reason are permitted together. Response to Comments at 4. DEQ delineates the permits held by the facility and does not include the air permit that was previously issued to the ethanol "source," ACDP No. 05-0006-ST-01. *See* Standard Air Contaminant Discharge Permit Review Report, Permit No. 05-0023-ST-01, page 3. However, on the other hand, DEQ references Cascade Kelly's use of "existing, regulated equipment *shared with a separate permitted facility* (CPBR's ethanol plant ACDP 05-0006-ST-01)." Response to Comments at 12 (emphasis added). Thus, it is apparent from the record that DEQ was far from clear as to whether it was issuing a separate air permit for the "crude oil facility," or issuing a single air permit for both crude and ethanol activities. Illustrative of the confusion, DEQ considered the ethanol and crude operations to be separate when determining the capacity of the facility to emit air pollution. Yet the cover page of the ACDP identifies both petroleum and ethanol loading and unloading as authorized activities. As a result, DEQ vastly underestimated the facility's capacity to operate and a new permitting decision is required.

ii. DEQ failed to consider the future capacity of the source.

DEQ further erred in considering only minor modifications at the Clatskanie oil terminal in calculating the source's potential to emit and in issuing a major source, instead of a major federal source, air permit to Cascade Kelly. Large construction projects are in the works that will vastly expand the capacity of the facility. It appears that Cascade Kelly is attempting to piecemeal the changes at the facility to avoid recognition as a major federal source and DEQ acquiesced in this conduct. As a result, DEQ issued Cascade Kelly the incorrect type of permit under Oregon's Clean Air Act.

EPA guidance and implementation of the Clean Air Act at the federal and state level does not allow a source to piecemeal the construction and/or modification of its facility in an attempt to avoid classification as a major federal source. *See, e.g.,* Letter from Acting Assistant Administrator for Air & Radiation to Wisconsin Electric Power Company at 7-8 (Feb. 15, 1989) ("WEPCO cannot evade PSD and NSPS applicability by carving out, and seeking separate treatment of, significant portions of an otherwise integrated renovation program. Such piecemeal actions, if allowed to go unchallenged, could readily eviscerate the clear intent of the Clean Air Act's new source provisions."¹).

Moreover, DEQ was aware or should have been aware of the planned rail and dock improvements at the facility. The controversy over expanding rail and dock capacity to support the oil terminal at Clatskanie has played out in the media and before Oregon commissions as well as local and municipal bodies. It is no secret that railroad improvements at Rainier and

¹ Available at: <http://www.epa.gov/region07/air/nsr/nsrmemos/lifextn.pdf>
PETITION FOR RECONSIDERATION OF STANDARD AIR CONTAMINANT
DISCHARGE PERMIT NO. 05-0023-ST-01

dock improvements at Port Westward will benefit Cascade Kelly and increase the Clatskanie oil terminal's capacity. For example, when Rainier completes the railroad improvements that will be funded at least in part by Connect Oregon funds, up to 38 trains a month will be able to bring crude to the Clatskanie oil terminal for offloading. Likewise, when dock improvements are finalized at Port Westward, additional vessels will be able to transload crude from the terminal. However, DEQ failed to consider any of these infrastructure improvements when it issued the air permit under review here.²

This pattern of piecemealing expansion and/or changes at the facility is not new, but is evidenced by Cascade Kelly's past conduct as well. Crude was slowly transferred in to the terminal and equipment changes have been applied for on a piecemeal basis. DEQ determined that Cascade Kelly acted far beyond what was represented in their past permit applications, but DEQ has once again accepted Cascade Kelly's limited representations of what its plans are for the oil terminal.

b. DEQ improperly calculated the Clatskanie oil terminal's potential to emit.

DEQ erroneously calculated Cascade Kelly's potential to emit without sufficient information to calculate the emission rate of air contaminants, based on the false assumption that the facility was not already operating its new source, by including physical and operational limitations to lower the projected emissions that are not practically enforceable, and by excluding emissions from stationary trains and marine vessels. If calculated properly, the facility is a federal major source of VOC and would require a PSD permit.

DEQ lacked sufficient information to calculate the emission rate of air contaminants. Every application for a Standard ACDP must include "an estimate of the amount and type of each air contaminant emitted by the source." OAR 340-216-0040. As noted, Cascade Kelly has been operating the Clatskanie oil terminal since at least October of 2012. Petitioners commented that the permit application failed to quantify the emissions from existing operations or to identify the rate of emissions that would result at maximum operating capacity. Comments at 8. DEQ responded that it "evaluated the emission rate calculations for the *proposed* transloading facility and concluded they were appropriately accounted for in CPBR's permit application." Response to Comments at 9 (emphasis added). Nowhere in the proposed permit or review report does DEQ address emissions from the existing transloading operations and the calculations cited by DEQ in its Response to Comments, at 12-14, were not included anywhere in CPBR's permit file. Besides the mention in the Response to Comments, the only location where the Petitioners could find any reference to any calculations was a handwritten note in DEQ's enforcement file for CPBR that is cursory, incomplete, and contradicts the calculations DEQ presents in its Response to Comments. *See Exhibit 1.*

² Other agencies, such as the Army Corps of Engineers and National Marine Fisheries Service, are in the process of reviewing applications and proposals for these expansion activities. Thus it is reasonable to ask that DEQ likewise consider the expansion of infrastructure at the Clatskanie oil terminal when estimating the potential to emit.

DEQ's reliance on Plant Site Emissions Limits (PSELs) is inappropriate in this instance where Cascade Kelly is already operating the crude transloading terminal. Oregon's state air rules define potential to emit (PTE) as the lesser of either (1) the capacity of a source; or (2) the maximum allowable emissions, including any physical or operational limitation if it is enforceable by the Administrator. OAR 340-200-0020(100). DEQ acknowledges that "[t]he transloading facility is currently operating without a permit" and even notes that "DEQ's pending notice of violation states that the facility is currently operating without a permit." Response to Comments at 4. Turning a blind eye to this express language, DEQ explains that "the requested VOC PSEL is less than the Federal Major Source threshold of 100 tons per year" and thus the terminal does not trigger federal New Source Review. Response to Comments at 5, 12. This reasoning would only apply if the facility was not currently operating without a permit.

Inconsistencies in the agency's response highlight the fault in this reasoning. DEQ states that "this permit action is a new permit for a *currently unpermitted* facility," but the PSELs represent the maximum allowed emission rate increase "from the *proposed* construction and operation of an ethanol and crude oil transloading facility." Response to comments at 11. The "maximum permitted emissions" would apply if the source was not yet operating. Here, it is. Under the existing facts, it is inappropriate and contrary to its own rules for DEQ to apply a PSEL and ignore Cascade Kelly's ongoing unpermitted operations.

It is also inappropriate to rely on the "operationally limiting factors" DEQ cites, *see* Response to Comments at 12-13. These "operationally limiting factors" were not presented for public review. Petitioners were unable to evaluate DEQ's calculations of the maximum operating capacity of the existing, unpermitted, facility during the public comment period. As noted above, the only discussion of the capacity of the existing, unpermitted, facility that could possibly be accessed by the public was a hand written calculation, that did not explain its assumptions, was only accessible by the Petitioners after the close of the public comment period, and contradicts the calculations that DEQ presents as definitive in its Response to Comments. *See* Exhibit 1.

DEQ makes numerous, unsubstantiated assumptions to establish the "operationally limiting factors" it relies on for its calculation. For instance, DEQ relies on the permitted control efficiency of the John Zink vapor recovery system that is permitted under an existing permit for an ethanol facility. However, since that permit does not apply to the operations of the crude oil transloading operations, DEQ cannot blindly rely on the same efficiency calculations. Assuming, without any analysis or explanation, that a system designed to control the operations of an ethanol unloading operation would have the same capacity or efficiency when used to control crude oil transloading operations is an incredible leap of logic that DEQ fails to explain in any manner. DEQ even tacitly admits this by requiring testing of the John Zink vapor recovery system if it is not replaced by the proposed vapor combustion unit.

Using, without analysis, the permitted capture efficiency of a control device for one facility to limit the unpermitted emissions from a completely different facility is improper. And this is simply one example of DEQ's improper assumptions that form the basis for its flawed methodology. Given these serious concerns regarding DEQ's methodology for calculating the potential to emit of the existing, unpermitted, facility, DEQ should provide the public the ability

to formally comment on DEQ's methodology. This is vitally important because a proper calculation of the potential to emit, even with valid "operationally limiting factors," would make the Clatskanie oil terminal a federal major source subject to the Clean Air Act's Prevention of Significant Deterioration requirements.

DEQ also improperly failed to consider emissions from trains and marine vessels engaged in the stationary industrial process when calculating the facility's potential to emit. DEQ states that trains and marine vessels are mobile sources, and emissions from trains and marine vessels that come to or from the Clatskanie oil terminal are defined as "secondary emissions" that are not included when assessing a facility's potential to emit. Response to Comments at 5. *See also* OAR 340-200-0020(109) (defining "Secondary Emissions" as "include[ing], but not limited to . . . [e]missions from ships and trains coming to or from a facility"). DEQ's response misses the mark. Petitioners commented that emissions from trains and marine vessels *while engaged at the stationary source itself* do not fit within the definition of secondary emissions. *See* Comment at 16-19.

Cascade Kelly attempts to read in language that does not exist in DEQ's own rules; specifically, the requirements that a train or marine vessel "further the purpose" of the mobile source, directly supply energy to the material transfer process, and be subject to substantial control by the stationary source. But the language defining secondary emissions is express: it includes only those ships and trains coming to or from a facility. The emissions from trains and marine vessels while engaged at the source should be calculated as part of the primary emissions when used as part of the industrial process and not simply to bring material to and from the source. *Id.* Cascade Kelly is operating a *transloading* terminal. These operations could not exist without the idling trains and marine vessels at the location of the stationary source itself. DEQ's response fully ignores this comment.

For those air contaminants emitted from trains and vessels moving to and from the facility, which are properly considered secondary emissions, DEQ again misses the mark. By improperly relying on a PSEL (instead of maximum operating capacity) to avoid federal Major New Source Review, DEQ also improperly avoids calculating the secondary emissions as part of the overall emissions for the source. DEQ's calculations are inconsistent with federal and state law, as well as the agency's own rules. Because authorization of the ACDP was based on these faulty calculations, DEQ should reconsider the decision.

III. The ACDP unlawfully allows Cascade Kelly to violate federal and state law.

DEQ will issue an air quality permit if the proposed permit action is determined to appropriately address all necessary legal requirements. *See, e.g.,* OAR 340-216-0025(6) (requiring an ACDP to contain all applicable requirements). DEQ should reconsider the issuance of the ACDP because it fails to meet the requirements of the federal Clean Air Act, Oregon's Clean Air Act, and DEQ's own rules.

DEQ lacked critical information necessary to evaluating Cascade Kelly's permit application regarding the type of volatile organic liquid that will be received, transloaded, stored, and shipped at the Clatskanie oil terminal. Petitioners commented that Cascade Kelly's permit

application was incomplete because it failed to identify the *type* of volatile organic liquid it plans to receive. Comments at 9-10. DEQ responded that “[n]o applicable requirements associated with the Air Quality program pertain to the commenters’ points of concern.” Response to Comments at 3. This not only fails to substantively respond to Petitioners’ comment but also directly contradicts DEQ’s own rules.

Each application for a Standard ACDP must include, *inter alia*, a description of production processes, related flow chart, type and quantity of fuels used, and an estimate of the amount and type of each air contaminant emitted by the source. OAR 340-216-0040. Understanding the type of volatile organic liquid Cascade Kelly will handle at the Clatskanie oil terminal is essential to determining the amount and type of air contaminant the facility will emit.

Indeed, DEQ agrees “crude oils are not all the same and the physical characteristics displayed between different crude oils may vary tremendously.” Response to Comments at 10. Yet even after given the opportunity to require more detailed information from Cascade Kelly, DEQ required Cascade Kelly only to identify that it would handle crude oil, generally, and ethanol. DEQ has failed to require critical information regarding the type of crude oil handled at the facility despite the agency’s recognition that such information is essential. Hence there is no basis for the agency’s assumption that a Reid Vapor Pressure (RVP) of 12.75 represents a worst case scenario.

DEQ further ignores such discrepancies by assuming the crude oil will all come from the Bakken. DEQ states that it “required CPBR to submit information related to the HAP content of *Bakken crude oil* . . . to determine if the source would be a Major source of HAPs and require a Title V permit.” Response to Comments at 7 (emphasis added). There is no information justifying or explaining DEQ’s assumption that Cascade Kelly will only handle Bakken crude oil. DEQ states, without basis, that its “review determined the CPBR transloading terminal’s physical and operational design is typical and consistent with the petroleum and volatile organic liquid terminaling industry.” Response to Comments at 4. Nothing in the permit application or public notice, however, provides information about the type of volatile organic liquid that Cascade Kelly intends to handle and whether that is the type of crude oil “typical” for the terminaling industry.

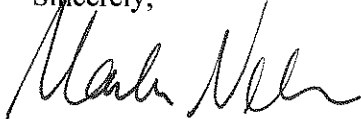
The ACDP improperly authorizes future hypothetical operations. DEQ’s own rules require each application for a Standard ACDP include, *inter alia*, a description of production processes, related flow chart, type and quantity of fuels used, and an estimate of the amount and type of each air contaminant emitted by the source. OAR 340-216-0040. Cascade Kelly’s records, submitted to DEQ, demonstrate that it has not handled ethanol since before the change of ownership in 2010. To consider ethanol under this ACDP borders on absurd. Still, the ACDP authorizes storage, barge loadout operations, and associated emissions controls for the transloading of ethanol “[i]f or when the ethanol manufacturing facility commences operation.” Permit Review Report at 4. Because the ACDP is inconsistent with DEQ’s own rules, the agency should reconsider it.

/// /// ///

CONCLUSION

For the reasons listed above, DEQ inadequately responded to the concerns raised in the comments on Cascade Kelly's proposed ACDP for the Clatskanie oil terminal. The ACDP authorized by DEQ unlawfully allows Cascade Kelly to violate federal and state laws and regulations. Petitioners urge DEQ to reconsider its decision to issue the ACDP to Cascade Kelly for the Clatskanie oil terminal.

Sincerely,



Marla Nelson
Staff Attorney
Northwest Environmental Defense Center

Submitted on behalf of Northwest Environmental Defense Center, The Center for Biological Diversity, Neighbors for Clean Air, Sierra Club, and Columbia Riverkeeper

Cc:

Dick Pedersen, DEQ Director
Tanya Sanerib, The Center for Biological Diversity
John Krallman, Neighbors for Clean Air
Devorah Ancel, Sierra Club
Lauren Goldberg, Columbia Riverkeeper

Pollutant	CAS No.	Throughput	Emission Factor	Source	Potential To Emit	
					unrestricted lb/hr	limited TPY
VOC	--	1,050 kgal/hr	0.0172 lb/kgal	AP-42 Chapter 5.2	18.1	15.82
GHG (CO2e) *	--	1,050 kgal/hr	0.003 lb/kgal	Engineering Estimate	2.8	2.49
H2S	7783-06-4	1,050 kgal/hr	0.000034 lb/kgal	Engineering Estimate	0.04	0.03

* GHG are reported as CO2e and are based on 0.743% methane by weight (based on samples analyzed at the existing VRU inlet).

98.7% capture efficiency (per AP-42 Chapter 5, Section 2) - 1.3% escape as untraced fugitives
 Per AP42 Chapter 5.2, VOC emissions account for an average of 85% of total organic compounds

CL = CA + CG = 1.559 lb/kgal
 CA = 0.86 Per Table 5.2-3 of AP-42
 CG = 0.699 Per equation (3) of AP-42 Section 5.2

G 1.02
 P 9.651 psia For RVP12.75 - from annual TANKS simulation
 M 49.9677
 T 513.24 R from annual TANKS simulation

760,000,000 gal/yr (100 turnovers ea. storage tank)
 $(7.6e^5 \text{ kgal}) (1.559 \text{ lb/kgal}) (0.013) (1 \text{ ton}/2000 \text{ lb}) = 7.7 \text{ tpy loadout fug.}$
 $(7.6e^5 \text{ kgal}) (0.00034 \text{ lb/kgal}) (1 \text{ ton}/2000 \text{ lb}) = 23.1 \text{ tpy loadout VRU}$
 $(7.6e^5 \text{ kgal}) (0.000034 \text{ lb/kgal}) (TANKS 4.0) = 6.2 \text{ tpy (2 tanks)} = 12.4 \text{ tpy tank loss}^{\text{***}}$
 $\frac{7.7 \text{ tpy} + 23.1 \text{ tpy} + 12.4 \text{ tpy}}{43.2 \text{ tpy}}$

* Only based on 100 turnovers/tank/yr. Original out file (01/11/14) indicates potential for 1,340,640,000 gal/yr (30 tanks/m. @ 2,940,000 gal/ea.).

** from 02/22/2013 CPBR engineering test... permit allows/assumes 0.0835
 *** tank loss diasin + releases emissions from roof loadout vents (~2.13 tpy)

Page from current CPDC permit application

COLUMBIA PACIFIC BIO-REFINERY																			
TERMINAL OPERATIONS - POTENTIAL EMISSIONS SUMMARY																			
EP#	CE#	EU#	Emission Unit Description	PM/PM10/PM2.5		NOx		SO2		VOC		CO		GHG (CO2e)		H2S		HAPs	
				lb/hr	tpy	lb/hr	tpy	lb/hr	tpy	lb/hr	tpy	lb/hr	tpy	lb/hr	tpy	lb/hr	tpy	lb/hr	tpy
EP01	CE01	EU01	VCLA VCU (Vapor Destruction)	---	---	---	---	---	---	27.8	24.4	---	---	---	---	---	---	---	---
EP01	CE01	EU02	VCU (Propane Combustion)	1.2	3.8	3.8	11.6	0.2	0.5	---	---	1.6	5.1	22,210.3	68,725.5	---	---	---	---
FS01	---	TK6153-6158	Storage Tanks	---	---	---	---	---	---	3,288.5	35.9	---	---	513.2	5.6	6.58	7.2E-02	0.1	0.6
FS02	---	---	Tank Farm Equipment Leaks	---	---	---	---	---	---	0.0	0.1	---	---	0.0	0.0	6.7E-05	2.9E-04	negligible	negligible
FS03	---	---	Loadout Fugitives (Leaks)	---	---	---	---	---	---	18.1	15.8	---	---	2.8	2.5	0.0	0.0	0.91	0.80
FS04	---	---	Process Tanks	---	---	---	---	---	---	1,259.7	1.3	---	---	198.1	0.0	2.5	0.0	9.68	0.01
TOTAL				1.2	3.8	3.8	11.6	0.3	0.6	4,594.1	77.5	1.6	5.1	23,016.3	68,814.1	9.1	0.1	12.4	3.8

TANKS 4.0.9d
Emissions Report - Detail Format
Tank Identification and Physical Characteristics

Identification
 User Identification: CPBR Existing VOL Tank
 City: Astoria
 State: Oregon
 Company: CPBR
 Type of Tank: Internal Floating Roof Tank
 Description: Crude Oil Storage

Tank Dimensions
 Diameter (ft): 134.00
 Volume (gallons): 3,800,000.00
 Turnovers: 100.00
 Self Supp. Roof? (y/n): N
 No. of Columns: 8.00
 Eff. Col. Diam. (ft): 1.00

Paint Characteristics
 Internal Shell Condition: Light Rust
 Shell Color/Shade: White/White
 Shell Condition: Good
 Roof Color/Shade: White/White
 Roof Condition: Good

Rim-Seal System
 Primary Seal: Mechanical Shoe
 Secondary Seal: None

Deck Characteristics
 Deck Fitting Category: Detail
 Deck Type: Bolted
 Construction: Sheet
 Deck Seam: Sheet: 5 Ft Wide
 Deck Seam Len. (ft): 2,820.52

Deck Fitting/Status	Quantity
Access Hatch (24-in. Diam.)/Bolted Cover, Gasketed	1
Automatic Gauge Float Well/Bolted Cover, Gasketed	1
Roof Leg or Hanger Well/Adjustable	49
Sample Pipe or Well (24-in. Diam.)/Silt Fabric Seal 10% Open	1
Slub Drain (1-in. Diameter)/Silt Fabric Seal 10% Open	144
Column Well (24-in. Diam.)/Pipe Col.-Flex. Fabric Sleeve Seal	8
Ladder Well (36-in. Diam.)/Sliding Cover, Gasketed	1

TANKS 4.0.9d
Emissions Report - Detail Format
Liquid Contents of Storage Tank

CPBR Existing VOL Tank - Internal Floating Roof Tank
Astoria, Oregon

Mixture/Component	Daily Liquid Surf. Temperature (deg F)		Liquid Bulk Temp (deg F)	Vapor Pressure (psia)		Vapor Mol. Weight	Liquid Mass Fract.	Vapor Mass Fract.	Mol. Weight	Basis for Vapor Pressure Calculations	
	Month	Avg.		Min.	Max.						Avg.
Crude oil RVP 12.75	All	52.20	48.32	56.06	50.85	9.2100	N/A	N/A	50.0000	207.00	

Individual Tank Emission Totals

Emissions Report for: Annual

CPBR Existing VOL Tank - Internal Floating Roof Tank
Astoria, Oregon

Components	Losses(lbs)			Total Emissions
	Rim Seal Loss	Withdrawl Loss	Deck Fitting Loss	
Crude oil RVP 12.75	3,732.56	2,874.31	3,420.88	12,442.33

X2 tanks
= 12.4 TPY