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May 22, 2015

Oregon Department of Environmental Quality
c/o Rob Burkhart, Permit Writer
2020 SW 4th Ave., Ste. 400
Portland, OR 97201
nwr.wqpermit@deq.state.or.us

Submitted via email

RE: Public Comments on Proposed Troutdale Energy Center, LLC, NPDES Permit.

Dear Mr. Burkhart:

Columbia Riverkeeper (“Riverkeeper”) submits the following comments on the Oregon Department of Environmental Quality’s (“DEQ”) proposed National Pollution Discharge Elimination System (referred to herein as “Permit” or “NPDES Permit”) permit for Troutdale Energy Center, LLC (“TEC”). Threats facing the Columbia River and its tributaries are severe by any measure. In reviewing NPDES permit applications, federal and state law empower and obligate DEQ to protect water quality and the public’s right to safe swimmable, fishable, and drinkable waters. Riverkeeper therefore requests that DEQ deny TEC’s Permit as drafted because the proposed pollution discharge fails to protect the Sandy River and the communities that depend on it for sustenance and recreation.

Columbia Riverkeeper’s Commitment to Improving Water Quality in the Columbia River Basin.

Riverkeeper’s 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’s 8,000 members and supporters live, recreate, and work throughout the Columbia River Basin, including near and downstream of TEC’s proposed natural gas plant. This public comment is part of Riverkeeper’s effort to improve quality of life in the Columbia River Basin for purposes including public health, recreation, and habitat quality.

Riverkeeper works to improve water quality and reduce pollution in the Columbia River Basin through various means, including commenting on pollution discharge permits. Through the NPDES permitting process, DEQ has a critical opportunity to ratchet back pollution and prevent new pollution into the severely degraded Columbia River system. We therefore urge DEQ to consider public comments and use its full authority to reduce pollution through the NPDES permitting program.

Background on Laws and Regulations to Protect Water Quality.

Congress enacted the Clean Water Act in 1972 to “restore and maintain the chemical, physical, and biological integrity of the Nation's waters.” 33 U.S.C. § 1251(a). Congress set a national goal “that the discharge of pollutants into navigable waters be eliminated by 1985.” *Id.* Similarly, the Oregon Legislature has declared that “pollution of the waters of the state constitutes a menace to public health and welfare.” ORS 468B.015. The legislature declared a public policy: 1) to conserve the waters of the state; 2) to protect, maintain and improve the quality of the waters of the state; and 3) to provide that no waste be discharged into any waters of the state without first receiving necessary treatment or other corrective action to protect the legitimate beneficial uses of waters of the state. *Id.* Congress and the Oregon legislature made clear that limiting the amount of pollution discharged into a river is critical to restoring our waterways.

DEQ May Not Authorize Overlapping Mixing Zones.

DEQ’s draft Permit proposes authorizing overlapping mixing zones, which runs counter to U.S. Environmental Protection Agency (“EPA”) guidance. Riverkeeper requests that DEQ revise the draft Permit to ensure consistency with EPA guidance and protect designated uses. Specifically, EPA’s Water Quality Standards Handbook states:

Due to potential additive or synergistic effects of certain pollutants that could result in the designated use of the waterbody as a whole not being protected, state and tribal mixing zone policies should specify, and *permitting authorities should ensure, that mixing zones do not overlap.* Additionally, the EPA recommends that permitting authorities evaluate the cumulative effects of multiple mixing zones within the same waterbody. The EPA has developed a holistic approach to determine whether a mixing zone is appropriate based on such cumulative effects considering all of the impacts to the designated uses of the waterbody (see *Allocated Impact Zones for Areas of Non-Compliance (1995)*). If the total area affected by elevated concentrations within all mixing zones combined is small compared to the total area of the waterbody in which the mixing zones are located, then mixing zones are likely to have little effect on the designated use of the waterbody as a whole, provided that they do not impinge on unique or critical habitats. As understanding

of pollutant impacts on ecological systems evolves, states and tribes may find specific cases in which no mixing zone is appropriate.

EPA Water Quality Standards Handbook, EPA-820-B-14-004, Section 5.1.1 (Sept. 2014), <http://water.epa.gov/scitech/swguidance/standards/handbook/chapter05.cfm#section512> (emphasis added).

Contrary to EPA guidance, DEQ proposes that TEC's mixing zone and zone of initial dilution overlap with the Troutdale Water Pollution Control Facility ("WPCF") mixing zone and zone of initial dilution. *See* Permit Fact Sheet at 14 ("An RMZ [regulatory mixing zone] and ZID [zone of initial dilution] designated in the permit for the discharge (at Outfall 001) that will be overlays of the existing RMZ and ZID designated in the Troutdale WPCF NPDES permit."). DEQ acknowledges that "[i]n general, it is DEQ's goal to avoid overlapping mixing zones by two or more discharges." *Id.* However, DEQ concludes that overlapping mixing zones are warranted because "by utilizing a single outfall and a portion of the river already designated a mixing zone, the footprint and overall impacts of the combined discharges will be limited." DEQ fails to support this conclusory statement with empirical evidence. Similarly, DEQ fails to address how the agency analyzed—if at all—the synergistic effect of overlapping mixing zones.

Moreover, DEQ's rationale for authorizing overlapping mixing zone fails to explain how using a single outfall in a portion of a river already burdened by a toxic mixing zone advances the purpose of the CWA and ensures protection of designated uses.

EPA's clear guidance on overlapping mixing zones requires that DEQ both revise the draft Permit as well as OAR 340-041-0053(2)(c)(B). OAR 340-041-0053(2)(c)(B), which describes criteria for establishing mixing zones, is less stringent than EPA's water quality standards guidance document. OAR 340-041-0053(2)(c) states in part:

[T]he Department will define a mixing zone in the immediate area of a wastewater discharge to

- (B) Avoid overlap with any other mixing zones to the extent possible and be less than the total stream width as necessary to allow passage of fish and other aquatic organisms.

Avoiding overlapping mixing zones "to the extent possible" is less protective than EPA's directive to states "to ensure" that mixing zones do not overlap. In sum, Riverkeeper requests that DEQ: (1) reevaluate the draft Permit to ensure that mixings zones do not overlap, and (2) prioritize amending OAR 340-041-0053(2)(c)(B) to ensure consistency with EPA guidance and protect designated uses.

DEQ's Antidegradation Review is Inconsistent with State Law.

Elevated water temperatures threaten Endangered Species Act ("ESA") listed salmonids and other species. Salmon and other cold-water species depend on cold water temperature for survival and recovery. Excessive temperature impacts salmon metabolism, growth rate, and disease resistance, as well as the timing of salmonid migrations, fry emergence, and smoltification. Salmon in the Columbia River and its tributaries, including the Sandy River, suffer from the extremely high water temperatures during the summer months. Excess temperature is one reason for the decline of endangered salmon. For this reason, DEQ must, at a minimum, conduct a robust Antidegradation Review to ensure that TEC's temperature and other pollution discharges will not harm ESA-listed species.

DEQ acknowledges that TEC's Permit requires an in-depth Antidegradation Review. Permit Fact Sheet at 29. Nonetheless, DEQ's Antidegradation Review ignores critical components of DEQ's Antidegradation Review rule. Specifically, DEQ fails to analyze and make the requisite finding that "[t]he action is necessary and benefits of the lowered water quality outweigh the environmental costs of the reduced water quality." OAR 340-041-0004(9)(a)(B). DEQ's Permit Fact Sheet contains no discussion of why the action is necessary, and how the benefits of lowered water quality outweigh the environmental costs of reduced water quality.

DEQ must conduct the balancing test proscribed under OAR 340-041-0004(9)(a)(B) "in accordance with DEQ's 'Antidegradation Policy Implementation Internal Management Directive ["IMD"] for NPDES Permits and section 401 water quality certifications,' pages 27, and 33-39 (March 2001)." *Id.* DEQ's Antidegradation Policy IMD further elaborates that "the ...applicant... must provide DEQ with enough information to allow for a financial impact analysis that assesses whether allowing an activity that lowers water quality has socioeconomic benefits that outweigh the environmental costs." DEQ, 2001. *Internal Management Directive: Antidegradation Policy Implementation* at 34. DEQ's Permit Fact Sheet and associated attachments are devoid of this analysis. For example, the public cannot comment on the veracity of the applicant's financial impact analysis if DEQ fails to address the analysis in the agency's Antidegradation Review. For this reason alone, DEQ cannot proceed with issuing the Permit.

Riverkeeper requests that DEQ reopen the public comment period after revising the draft Permit Fact Sheet to account for the Antidegradation Review balancing test required under OAR 340-041-0004(9)(a)(B). In the event DEQ fails to afford the public this opportunity, Riverkeeper provides the following comments to inform DEQ's Antidegradation Review.

TEC fails to demonstrate that the socioeconomic benefits of the proposed natural gas plant outweigh the significant environmental costs. Riverkeeper anticipates that TEC's socioeconomic benefits analysis will examine jobs, tax revenue, and consumer benefits generated by operating a natural gas plant. Again, Riverkeeper requests the opportunity to critique this project proponent's one-sided analysis. To the extent DEQ considers the socioeconomic benefits of the proposed natural gas plant, DEQ must consider the environmental costs of operating the natural gas plant. DEQ cannot restrict its analysis to the environmental costs to water quality if the agency is willing to look at the socioeconomic benefits of facility operations, in general.

DEQ's analysis of environmental costs of building and operating a natural gas plant must include, at a minimum, the environmental costs of:

- extracting natural gas;
- transporting natural gas;
- increasing water pollution in the Sandy River;
- harming environmental restoration sites along the Sandy River;
- increasing air pollution;
- contributing to climate change;
- degrading air quality in the Columbia River Gorge National Scenic Area;
- degrading scenic vistas in the Columbia River Gorge National Scenic Area;
- increasing impervious surfaces and stormwater pollution;
- foregoing alternative industrial development with lower environmental impacts.

After examining TEC's socioeconomic benefits and environmental costs, DEQ must conclude that TEC failed to demonstrate that the action (*i.e.*, building and operating a new natural gas plant) is necessary.

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Conclusion.

For the reasons stated above, DEQ should deny TEC's NPDES Permit. Riverkeeper appreciates DEQ consideration of public input on this important permitting decision. Please direct any correspondence to the undersigned at lauren@columbiariverkeeper.org.

Sincerely,

A handwritten signature in cursive script that reads "Lauren Goldberg".

Lauren Goldberg
Staff Attorney
Columbia Riverkeeper