

**Oil-by-Rail in Washington State:
The Energy Facility Site Evaluation Council Process for
the Tesoro Savage Project**

**Prepared by Columbia Riverkeeper
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Tesoro Savage Project Overview

The Tesoro Savage project is designed to receive crude oil by rail from various sources in North America and pipe it to storage tanks where it will be held until it is loaded onto ships or barges for transport to end users. When completed, approximately four unit trains, carrying up to 380,000 barrels of crude oil per day, will arrive for staging on existing and planned tracks at the Port of Vancouver (Port). Tesoro Savage proposes adding up to two additional rail lines will to accommodate the rail unloading facility. Once at the site, Tesoro Savage will store crude oil in up to six double-bottom, above ground steel tanks located 1,600 feet north of the Columbia River. From these tanks, the crude oil will be transferred to a ship or barge by pumps.

On July 23, 2013, the Port of Vancouver approved a ground lease for Tesoro Savage to operate an oil-by-rail terminal on the Columbia River. Just over a month later, Tesoro Savage submitted an application to EFSEC seeking authorization to operate at the Port of Vancouver.

Energy Facility Site Evaluation Council Review

The Tesoro Savage project must go through the Energy Facility Site Evaluation Council (EFSEC) siting review process because it is a petroleum storage site that can receive more than an average of 50,000 barrels per day that will be transported over marine waters.

EFSEC project siting review, or certification, is the state licensing process for the siting, construction, and operation of an energy project. The Washington State Legislature created EFSEC in 1970 to provide "one stop" licensing for large energy projects. The Tesoro Savage project is the first of its type to undergo EFSEC review.

The Council – which is made up of the EFSEC chair and members of the Washington Departments of Commerce, Ecology, Fish and Wildlife, Natural Resources, as well as the

Utilities and Transportation Commission (optional inclusion from members of the Departments of Agriculture, Health, Transportation, and the Military Department) – is responsible for evaluating applications to ensure that all environmental and socioeconomic impacts are considered before a site is approved. For each energy project, the Council is augmented by representatives from particular cities, counties, or port districts potentially affected by the project. If the Council determines a project warrants a certification, the final decision then moves to the Governor.

If the Council determines that constructing and operating the facility will produce minimal adverse effects on the environment, ecology of the land and wildlife, and ecology of the state waters and aquatic life, and meets its construction and operation standards then it recommends that a Site Certification Agreement (SCA) be approved and signed by the Governor. The SCA lists the conditions the applicant must meet during construction and while operating the facility.

The Governor has sixty days to consider the Council's recommendation. The Governor then has three options: (1) approve the Council recommendation and execute the draft SCA, (2) reject the application, and (3) direct the Council to reconsider certain aspects of the project and draft SCA.

CERTIFICATION PROCESS

There are seven major steps in the certification process:

1. Application Submittal
2. Application Review
3. Initial Public Hearings

4. Land Use Consistency Hearing
5. Environmental Impact Statement
6. Adjudicative Proceedings and Permits Review
7. Recommendation to the Governor

1. Application Submittal

An application to EFSEC must follow the guidelines for applications found in [Chapter 463-60](#) Washington Administrative Code (WAC). The guidelines require the applicant to fully address more than 60 subjects dealing with environmental and socioeconomic impacts, including measures the applicant will take for mitigating or offsetting impacts the project may have.

EFSEC is required to make a determination on an application within 12 months of receipt, but an applicant may request EFSEC conduct its review using an Expedited Process ([Chapter 463-43 WAC](#)). In an Expedited Process, the Council is required to determine eligibility within four months of application submittal and make a recommendation to the Governor within six weeks of granting eligibility. However, to be eligible for expedited processing the Council must find that the proposed project has no significant environmental impact (or impacts will be mitigated to a non-significant level) and is consistent and in compliance with existing local land use ordinances. Only one application to EFSEC has been successful in meeting these criteria and after EFSEC's review, was approved by the Governor.

2. Application Review

When an application is submitted, EFSEC begins its application review. EFSEC retains an independent consultant to ascertain if the information submitted in the application conforms

to [Chapter 463-60 WAC](#) and in most cases, to prepare an Environmental Impact Statement (EIS).

The application must specify how the project will meet the Council's Construction and Operational Standards ([Chapter 463-62 WAC](#)). It also contains information and detail of the design, methods of construction, and operation of the proposed facility that will ensure environment protections. The application will describe how the applicant will abide by the rules and regulations that the Council will use to monitor and check for compliance with state laws. The application should contain the relevant information and data as specified in [Chapter 463-60 WAC](#) that would be necessary for the development of an EIS. The information in the application provides the technical background information for the adjudicative hearing.

EFSEC's independent consultant will advise the Council and the applicant if additional information is needed to prepare the EIS and/or commence the adjudicative hearings. When the Council determines there is sufficient information regarding the proposed project it will proceed with the adjudicative hearings.

The Council asks impacted counties, cities, and port districts to appoint representatives to sit on the Council when it considers issues within their jurisdiction. State law ([RCW 80.50.030](#)) only gives voting authority to city and county representatives; not to port district representatives. These members serve until the proposed site is accepted or rejected.

3. Initial Public Meeting

No later than 60 days of receipt of the application, the Council must hold an initial public meeting on the proposed project. The purpose of the initial public meeting is to explain the proposed project and the Council process. After the applicant has described the proposed

project, the Council explains the process for review, determination, and recommendation to the Governor. The Council also allows the public to present written or oral testimony relating to the proposed project. This meeting may also act as scoping meetings for the EIS. The initial public hearing is held in the vicinity of the proposed project after notifying public officials, publishing public notices, and putting out news releases.

4. Land Use Consistency Hearing

Subsequent to the informational public meeting, the Council must hold a land use hearing to ascertain if the proposed project is consistent with city, county or regional land use plans or ordinances. Anyone wishing to address the Council regarding consistency with land use plans may testify at this hearing.

If the Council determines the project is not consistent with local land use plans it will schedule an adjudicative proceeding (usually held concurrent with the adjudicative proceeding described below) to determine if it will recommend the Governor preempt the local land use regulations. Details for this process are contained in [Chapter 463-28 WAC](#).

5. Environmental Impact Statement

The Tesoro Savage project falls under both state and federal jurisdiction and, in turn, the project will require an Environmental Impact Statement (EIS) under both state and federal law. For major energy facilities the Council becomes the lead [SEPA](#) agency. If the proposal is an action and not exempt from SEPA, the Council asks the applicant to complete an Environmental Checklist. A checklist is not needed if the Council and applicant agree that an EIS is required, which is the case for the Tesoro Savage project.

Federal permitting requirements are handled by federal agencies, but EFSEC has worked cooperatively with federal agencies to develop EISs that fall under both the National Environmental Policy Act and the State Environmental Policy Act.

The Council retains an independent consultant to help in the preparation and review of the EIS. The applicant bears the expense of the EIS preparation, but the consultant working for the Council helps ensure that all pertinent environmental issues are addressed thoroughly. The Council can require the applicant to provide additional information that may require the applicant to conduct specific investigations.

The amount of time required to develop an EIS depends on:

- Whether the EIS is prepared in cooperation with the federal government
- Whether the information contained in the application is complete
- The time it takes to develop and finalize draft and final documents

The EIS is subject to public review. The Council holds public hearings on the draft EIS. If it is a joint federal/state EIS, joint hearings are held. At the same time the EIS is developed and related public hearings on the draft EIS are held, adjudicative proceedings may take place. However, the adjudicative proceedings must be finalized before the Council issues the final EIS.

6. Adjudicative Proceedings and Permits Review

Adjudicative proceedings are held at the same time [air and water discharge permits](#) are developed.

Adjudicative Proceedings

EFSEC's certification process calls for the Council to hold hearings on the proposed project to allow the applicant and opponents to present information to support their cases.

Council rules require the hearings to be conducted as "Adjudicative Proceedings" ([Chapter 463-30 WAC](#)). Land use preemption issues may be heard during these proceedings.

The Council's Adjudicatory Proceeding is a formal hearing process similar to courtroom proceedings, where the Council hears from the official parties to the proceedings. By law, all state agencies with members on the Council are considered parties to any Adjudicatory Proceeding before the Council (however, they may not elect to participate as a party). If an agency wishes to be an active participant in the proceedings, the agency's Assistant Attorney General represents the agency during the proceedings. The state Attorney General's Office appoints a [Counsel for the Environment](#) to be a party in the proceedings representing the public and its interest in protecting the quality of the environment.

Other interested persons, tribes, groups, or local, state, or federal agencies may petition the Council to become interveners in the proceedings. The Council considers the intervener petitions and determines whether to grant intervener participation based on the project's impact on the concerns of the interveners. If denied party status, petitioners may ask the Council for administrative review if they disagree with the Council's decision.

Prehearing Conferences

A series of prehearing conferences are held prior to the adjudicative proceedings to organize and schedule the hearings by subject matter. The primary purpose of the prehearing conferences is to streamline the hearings as much as possible by defining, focusing, and narrowing the issues. The Council or hearings officer uses these conferences to determine what contested issues will be heard during the adjudicative hearings, the order of issues to be heard, and a schedule for the hearings.

Hearings

The Council may use an Administrative Law Judge, or conduct the hearings itself. The Council attends the hearings, but may rely on its Administrative Law Judge for procedural rulings and other legal matters during the hearings.

The adjudicatory proceedings are conducted in a manner in accordance with the Washington State Administrative Procedures Act ([Chapter 34.05 RCW](#)). Expert testimony is given and cross-examination is allowed. Legal counsel typically represent interveners during the hearings.

The testimony and exhibits introduced during these proceedings are the basis for the record the Council refers to when determining whether to recommend project approval or disapproval to the Governor. Information from these proceedings is also used to determine the SCA's conditions for construction and operation of the project. The applicant must meet these conditions if the Governor approves the project.

Air and Water Discharge Permits

Additional hearings are scheduled for developing the conditions to be set in the air and water discharge permits if needed. Discharges to the air may require the applicant to receive a Prevention of Significant Deterioration (PSD) permit. The EPA has delegated responsibility for issuing the PSD to the Council. The PSD permit details the components and levels of contaminants that may be discharged to the air by the project. The applicant must provide evidence that the project will meet all local, state, and federal Clean Air Act standards before the Council will issue the permit. For general and operating air permit regulations see [Chapter 463-78 WAC](#).

The EPA has also granted the Council authority to issue the National Pollutant Discharge Elimination System (NPDES) permit for discharging wastes in the state's waters. Again the applicant is required to provide evidence that any discharge to state waters will meet all the standards in the state and federal Clean Water Acts. See [Chapter 463-76 WAC](#).

Council Considerations

When the adjudicative hearings have concluded, the Council takes time to deliberate and eventually writes an administrative order containing its findings of fact, conclusions of law, and, if it finds the project should proceed, a recommendation to the Governor to approve the project. The Council has the option of issuing a preliminary or draft administrative order allowing the parties to take exceptions to the findings. The Council then reviews any exceptions and issues a final administrative order.

7. Recommendation to the Governor

If the Council determines the project should be recommended to the Governor, it develops an administrative order on recommendation (including any recommended preemption of local land use regulations) and a draft Site Certification Agreement to be signed by the Governor. The SCA has all of the environmental, social, economic, and engineering conditions the applicant must meet for construction and operation throughout the life of the project. The draft SCA includes any proposed PSD or NPDES permits developed by the Council as attachments. If the Council determines the project should not be recommended to the Governor for approval, the final order explains the Council's decision. The Governor has sixty days to consider the Council's recommendation and can take one of the following actions:

1. Approve the Council recommendation and execute the draft SCA

2. Reject the application
3. Direct the Council to reconsider certain aspects of the project and draft SCA