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BEFORE THE COWLITZ COUNTY HEARING EXAMINER

IN RE THE MATTER OF KALAMA
METHANOL MANUFACTURING AND
EXPORT FACILITY

APPLICANTS:
Port of Kalama and
Northwest Innovation Works – Kalama LLC

COWLITZ COUNTY SHORELINE
SUBSTANTIAL DEVELOPMENT AND
SHORELINE CONDITIONAL USE
PERMITS

File No. SL 16-0975

COLUMBIA RIVERKEEPER’S POST-
HEARING BRIEF

I. INTRODUCTION

Northwest Innovation Works (“NWIW”) proposes building the world’s largest methanol refinery at the Port of Kalama. Largest in terms of tons of methanol produced per day; nowhere near the largest in terms of acreage, however. The parcel in question is a snug fit for NWIW’s proposal, and this has caused portions of NWIW’s proposed methanol refinery to encroach into Shorelines along the Columbia River. Some portions of the refinery and export terminal—like the dock—may belong in Shorelines. Other portions of the facility—like the stormwater ponds and the refinery’s air separation units—do not need to be built so close to Washington’s protected waterways.

Columbia Riverkeeper’s August 31, 2016, and January 19, 2017, comments to Cowlitz County and the Hearing Examiner, respectively, addressed this issue, as did Columbia

1 Riverkeeper’s hearing testimony. This brief does not re-hash those arguments. Instead, it
2 highlights information from NWIW’s hearing testimony and post-hearing submittals that
3 demonstrate that certain portions of the methanol refinery need not be built in Washington’s
4 Shorelines.

5 The Hearing Examiner should deny the applications because NWIW proposes
6 constructing non-water-related portions of the methanol refinery in the Shorelines.
7 Alternatively, the Hearing Examiner’s order should identify which portions of the methanol
8 refinery are not water-related and condition approval of the Shorelines permits on NWIW
9 building all non-water-related project elements outside the Shorelines.

10 This brief addresses only the narrow issue of construction of non-water-related portions
11 of the refinery in the Shorelines. Columbia Riverkeeper preserves and reasserts all other
12 arguments made in comments and in testimony to the Hearing Examiner on all other issues, and
13 does not waive any issue by not addressing it here.

14 II. WASHINGTON’S SHORELINES MANAGEMENT ACT AND COWLITZ 15 COUNTY’S SHORELINES MASTER PROGRAM.

16 The Washington legislature enacted the Shorelines Management Act (“SMA”) because
17 Washington’s shorelines are fragile and the mounting pressure of development in the Shorelines
18 necessitates coordination in their management. *Buechel v. Dep’t of Ecology*, 125 Wash. 2d 196,
19 203 (1994). The SMA is broadly construed to protect the state’s shorelines as fully as possible.
20 *Id.* For the purposes of the SMA, “Shorelines” refers to the area 200 feet landward of the
21 ordinary high water mark. RCW 90.58.030(2)(d). “All development on the shorelines of this
22 state . . . must conform to the SMA.” *Buechel*, 125 Wash. 2d at 203.

23 Under Cowlitz County’s Shorelines Master Program (“CCSMP”), “water-related
24 industrial” uses are “permitted uses” in Urban Districts and “conditional uses” in Conservancy

1 Districts.¹ Industrial uses that are not “water-related” are, therefore, prohibited in these
2 Shorelines. A “use or portion of a use” is “water-related” when it “is not intrinsically dependent
3 on a waterfront location but [its] economic viability is dependent upon” a location in Shorelines.
4 WAC 173-26-020(43).

5 III. NON-WATER-RELATED PORTIONS OF THE METHANOL REFINERY
6 CURRENTLY PROPOSED IN THE SHORELINES.

7 Based on NWIW’s application, its representations at the public hearing, and its post-
8 hearing submittals, this section describes the portions of the methanol refinery that remain
9 proposed in the Shorelines and that Riverkeeper considers non-water-related. For the purposes
10 of discussing compliance with the SMA, Riverkeeper assumes that NWIW would construct the
11 methanol refinery according to the post-hearing revisions to the site plan. *See* Exhibit N-46.
12 However, NWIW’s repeated reference to these last-minute changes as “*Potential Site Plan*
13 *Revisions*,” *see id.*, pp.1–3 (emphasis added), casts doubt onto whether NWIW has actually
14 settled on a project design.

15 The non-water-related portions of the methanol refinery that NWIW proposes to build in
16 the Shorelines include the:

- 17 • Methanol bulk storage containment berm and secondary containment area. *See*
18 *NWIW Post-Hearing Site Plan Submittal*, pp.1–2.
- 19 • Stormwater infiltration pond. *See* Exhibit N-46, p.2.
- 20 • First flush pond. *See* Exhibit N-46, p.2.
- 21 • Fire suppression water storage pond. *See* Exhibit N-46, p.2.
- 22 • Air separation unit (“ASU”). *See* Exhibit N-46, pp.1–2.
- 23 • Ranney well and associated improvements. *See* Exhibit C-7, p.4.
- Site process water pump station/collector well. *See* Exhibit C-7, p.5.

24 ¹ *See* Cowlitz County Shorelines Master Program, p.49 (1977); *see also* Columbia Riverkeeper, *et al.*’s comments to
25 the Cowlitz County Department of Building and Planning regarding the Shorelines permits for NWIW’s methanol
refinery and export terminal, pp.11–13 (August 31, 2016).

- 1 • Electrical substation. *See* Exhibit C-7, p.5; *see also* Exhibit N-46, p.2.
- 2 • Loop road. *See* Exhibit C-7, p.5; *see also* Exhibit N-46, p.2.

3 IV. PORTIONS OF THE METHANOL REFINERY THAT NEED NOT BE WITHIN 200
4 FEET OF THE ORDINARY HIGH WATER MARK ARE, NEVERTHELESS,
5 PROPOSED IN SHORELINES.

6 As Columbia Riverkeeper's original comments to Cowlitz County explained, WAC 173-
7 26-020(43)'s reference to "portion[s] of a use" means that the hearing examiner should assess
8 whether each "portion" of the proposed methanol refinery is truly water-related. Despite
9 NWIW's overly simplistic attempts to characterize the entire proposal as water-dependent or,
10 alternatively, as water-related, *see* Exhibit C-9, p.4, NWIW supplied hearing testimony and post-
11 hearing submittals about moving portions of the methanol refinery out of the Shorelines.²
12 Presenting such evidence and argument is a tacit admission by NWIW the SMA does not allow
13 an applicant to lump all portions of a proposal into the "water-related" category simply because
14 certain portions of the proposal may be water-dependent. Accordingly, NWIW must explain
15 why each portion of the methanol refinery is water-related and, therefore, a permitted or
16 conditional use under the CCSMP.³ This is a burden that NWIW has failed to meet.

17 A. NWIW Admits That Portions of the Methanol Refinery Do Not Need to be
18 Located in Shorelines.

19 Certain portions of the methanol refinery that NWIW proposes building within 200 feet
20 of the ordinary high water mark clearly do not require placement in Shorelines. This subsection
21 addresses each portion of the facility identified in Section III, above, and explains why NWIW
22 has either (1) admitted that the portion of the use does not need to be sited in Shorelines or (2)
23 failed to prove that the portion of the facility needs to be in Shorelines.

24 First, through its consultant and witness Don Abrahamson, NWIW admitted in the public

25 ² Also, NWIW's application refers to certain aspects of the methanol refinery and export terminal as "water-related,"
26 and others as "water-dependent," Exhibit C-7, pp.4-5, further undermining the credibility of NWIW's argument that
the entire project should be lumped into the "water-dependent" or "water-related" category.

³ *See* Cowlitz County Shorelines Master Program, p.49 (1977).

1 hearing that the ASU, the electrical substation, and the three ponds would all function adequately
2 if not located in Shorelines. During direct testimony, Mr. Abrahamson stated that the ASU could
3 be moved out of Shorelines without compromising its function and that NWIW intended to make
4 this change to the project design. *See also* Exhibit N-46, p.1. And under cross-examination, Mr.
5 Abrahamson admitted that the electrical substation and ponds could still function adequately if
6 removed from Shorelines because those facilities could be connected to the dock via electrical
7 lines and pipes,⁴ respectively. Accordingly, NWIW admits that the methanol refinery would
8 function just as well if the ASU, the electrical substation for the dock, and the three ponds were
9 located outside of Shorelines.

10 Second, NWIW does not assert or provide evidence that the containment berm for the
11 methanol storage tanks needs to be within 200 feet of the ordinary high water mark. NWIW
12 instead claims that transforming this piece of Shoreline into a designated spill containment area
13 “will protect the shoreline . . . from potential spills.”⁵ This is, at best, counter-intuitive. More
14 importantly, nothing in that assertion explains why the berm and containment area can *only*
15 function if built within Shorelines. If, as NWIW claims, the berm exists to “protect the shoreline
16 . . . from potential spills,”⁶ common sense dictates that the berm would function much better if it
17 contained spills *outside* of Shorelines.

18 Third, NWIW simply provides no justification for why the loop road and the process
19 water well need to be located in Shorelines. The loop road appears to be simply a turn-around
20 area for vehicles and machinery; there is no obvious reason why such a use would need to occur
21 in Shorelines. It is also not clear why the Ranney well and process water pump station need to
22 be within 200 feet of the ordinary high water mark. Ranney wells generally rely on horizontal

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24 ⁴ NWIW asserts, and Columbia Rivetkeeper does not contest, that “Utilities serving site uses” like electrical lines
and water pipes serving the dock are “Water-Related Uses.” *See* Exhibit C-7, p.5.

25 ⁵ NWIW Post-Hearing Site Plan Submittal, p.2.

26 ⁶ *Id.*

1 drilling, so there is no apparent reason why the pump and associated above-ground water
2 collection facilities could not be moved back from the Shoreline.

3 B. Evidence Submitted by NWIW Suggests that Removing the Portions of the
4 Facility at Issue from Shorelines is Feasible.

5 Assuming—for the sake of argument only—that buildable upland space at a particular
6 location was an appropriate factor to consider when determining whether a portion of a use is
7 water-related, NWIW actually submitted evidence that there is enough buildable upland space at
8 the site of the proposed methanol refinery to accommodate *all* the contested portions of the use.

9 NWIW’s engineering consultant and witness Don Abrahamson testified to the effect that there is
10 enough space at the site for all of the project components, and that Technip frequently handles
11 projects under tight space constraints, such as building on offshore drilling platforms.⁷ Nothing
12 in NWIW’s post-hearing submissions contradicts Mr. Abrahamson’s assertion; NWIW merely
13 insinuates that living up to that promise might not be “easily” accomplished. Exhibit N-46, pp.1,

14 3. NWIW has also failed to provide any evidence beyond that relocating the contested facilities
15 from Shorelines to the uplands on site would jeopardize the proposal’s viability. Columbia
16 Riverkeeper expressed – and continues to have – doubts about this site’s compatibility with the
17 world’s largest methanol terminal. Nevertheless, it would be inappropriate for the Hearing
18 Examiner to ignore NWIW’s engineer’s assertion that there is enough buildable space on site.

19 In reality, a lack of buildable upland space at the site cannot justify allowing non-water-
20 related portions of the methanol refinery to be built in Shorelines. If NWIW miscalculated the
21 amount of buildable uplands necessary for the methanol refinery, the SMA does not contemplate
22 Washington’s Shorelines being used for spill-over building area. The Washington Shorelines

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24 ⁷ See also Exhibit N-46, p.1 (“Don Abrahamson (Project Engineering Manager, Technip) testified that the location
25 or orientation of certain units could be adjusted fairly easily to remove them from the shoreline districts.”).

1 Hearings Board’s (“SHB”) decision in *Nelson v. Ecology* is instructive.⁸ In that case, petitioners
2 owned “a narrow, flat strip of shoreline between Puget Sound and a ridge of steep slopes.”⁹
3 Petitioners sought a variance under the SMA to construct a “second story” garage “to serve as
4 storage for various corvette (car) memorabilia” inside the Shoreline setback.¹⁰ In upholding the
5 Washington Department of Ecology’s denial of the variance, the SHB explained that the
6 petitioners “are presumed to know that there were limitations on development that could be
7 undertaken in the conservancy shoreline area” and that “their situation [is] not unlike that of
8 property owners everywhere who possess more or larger . . . items than can be accommodated on
9 their property.”¹¹ The permits and legal standards at issue in *Nelson v. Ecology* and this case are
10 admittedly different. But the SHB’s reasoning makes clear that Washington’s Shorelines do not
11 suddenly open to construction whenever a Shoreline property owner runs short of buildable
12 upland space.

13 V. CONCLUSION

14 The Hearing Examiner should deny NWIW’s Shorelines applications, which contemplate
15 constructing non-water-related portions of the methanol refinery in Shorelines, in violation of the
16 CCSMP and Washington’s rules governing the issuance of Shorelines permits. *See* WAC 173-
17 27-160(1); *see also* WAC 173-27-150(1)(c). If the Hearing Examiner does not deny the permits
18 outright, the order should clearly identify which portions of the proposed methanol refinery are

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22 ⁸ *John Paul Nelson III and Cecilia Claire Nelson v. Ecology*, SHB S06-014, Order Granting Motion for Summary
23 Judgment (Sept. 14, 2006).

24 ⁹ *Id.* at 2.

25 ¹⁰ *Id.* at 9.

26 ¹¹ *Id.*

1 not water-related and condition approval of the Shorelines permits on NWIW building all non-
2 water-related project elements outside the Shorelines.

3 Dated this 14th day of February, 2017.

4
5 

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1 **DECLARATION OF SERVICE**

2 I, Cathy Hendrickson, declare that on February 14, 2017, I caused to be served a true and
3 correct copy of the foregoing on the following by First Class U.S. Mail and e-mail:

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18 I declare under penalty of perjury under the laws of the State of Washington that the
19 foregoing is true and corrected.

20 Dated this 14th day of February, 2017, in Seattle, Washington.

21 
22 Cathy Hendrickson, Litigation Assistant