

IN THE STATE OF OREGON  
BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY

**NORTHWEST ENVIRONMENTAL DEFENSE CENTER**, an Oregon non-profit corporation, **SURFRIDER FOUNDATION**, an international non-profit organization, **OREGON SHORES CONSERVATION COALITION**, an Oregon non-profit corporation, **FRIENDS OF YAQUINA BAY**, an Oregon non-profit organization, and **LINCOLN COUNTY CITIZENS FOR CLEAN WATER**, an Oregon public interest organization,

Petitioners,

v.

**OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY**, an agency of the State of Oregon

Respondent.

**NPDES Permit No. 101409**

**PETITION FOR RECONSIDERATION**

This Petition for Reconsideration is brought pursuant to ORS 183.480, 183.484, and OAR 137-004-0080 authorizing a request by adversely affected and aggrieved persons for reconsideration and review of final agency orders in other than contested cases.

Petitioners request that Oregon Department of Environmental Quality (“DEQ”) reconsider the issuance, requirements, limitations and conditions of the National Pollution Discharge Elimination System (“NPDES”) Waste Discharge Permit No. 101409, DEQ file No. 32947, issued for the Georgia-Pacific West, Inc, Toledo secondary fiber pulp and paper mill with an expiration date of July 31, 2010 (“GP Permit”). Petitioners request reconsideration because the GP Permit is inconsistent with state and federal laws, regulations and standards designed to protect water quality and beneficial uses.

Petitioners retain the right to request judicial review pursuant to ORS 183.484 with regard to the NPDES permit at issue in this petition.

Petitioners allege the following:

### **PARTIES**

1.

Petitioner Northwest Environmental Defense Center (“NEDC”) is a 501(c)(3) non-profit Oregon corporation with its principle place of business located in Multnomah County, Oregon.

2.

Petitioner NEDC is an organization dedicated to the responsible management of the natural resources of the Pacific Northwest. To further this organizational objective, NEDC works to preserve, protect and improve the environmental quality of the Pacific Northwest and has done so for over thirty years. NEDC regularly comments on pending government decisions affecting natural resource use in the Pacific Northwest and has litigated numerous claims pursuant to the federal Clean Water Act to preserve and improve water quality in the region. In cases brought under the Clean Water Act, NEDC acts as a representative of the public interest as authorized by 33 U.S.C. §1365 and as applied to state permitting programs under 40 CFR §123.30.

3.

Petitioner Surfrider Foundation is an 501(c)(3) international non-profit organization, with chapters in Oregon, including Newport, Oregon, and with its principle office in San Clemente, California.

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4.

Petitioner Surfrider Foundation is an environmental organization dedicated to the protection and enjoyment of the world's oceans, waves and beaches, for all people, through conservation, activism, research and education. The Oregon Chapter of Surfrider Foundation has approximately 500 members including surfers, divers, fishermen, swimmers, paddlers and other user groups who spend significant time on the coast and in the ocean. Both the Oregon State Chapter and individual members of the Newport, Oregon Chapter submitted written comments prior to the November 16, 2005, public comment deadline, and members of the Newport Chapter attended and spoke at the November 2, 2005, public hearing in Toledo, Oregon. Members of the Newport Chapter have monitored water quality at Lincoln County beaches as part of Surfrider Foundation's *Blue Water Task Force* since 1999.

5.

Petitioner Oregon Shores Conservation Coalition ("Oregon Shores") is a 501(c)(3) non-profit Oregon corporation with its principle mailing address as P.O. Box 1344, Depoe Bay, Oregon 97341.

6.

Oregon Shores believes that in Oregon, the beaches belong to the people. As part of Oregon's tradition of environmental stewardship, Oregon Shores serves as the guardian of the public interest for Oregon's coastal region. Oregon Shores is dedicated to preserving the natural communities, ecosystems and landscapes of the Oregon coast while conserving the public's access. Oregon Shores pursues these ends through education, advocacy, and engaging citizens to keep watch over and defend the Oregon coast. Oregon Shores has 1120 members throughout the State and nearly 1200 volunteers who participate in the organization's CoastWatch program.

7.

Petitioner Friends of Yaquina Bay is a local citizen's group organized for not for profit purposes. The principal place of business for the organization is Newport, Oregon. The organization is dedicated to enhancing the livability of Yaquina Bay and the adjacent coastal regions. Members of Friends of Yaquina Bay live, work and recreate in the areas near outfalls governed by the GP Permit.

8.

Petitioner Lincoln County Citizens for Clean Water is a public interest group organized in November 2005 with the goal of monitoring pollution in the water bodies of Lincoln County and specifically pollution from the Georgia Pacific West pulp and secondary fiber mill in Toledo. Members of the group attended the public hearings and filed comments regarding the issuance of the GP Permit. The group offers continued research and information support for additional water-related issues. All members are users of Nye Beach and adjacent, nearshore waters.

9.

Petitioners are adversely affected and aggrieved by DEQ's issuance of the GP Permit because the Permit violates the statutory and regulatory requirements of the Clean Water Act and state law, including requirements that protect public health. The Petitioners are also adversely affected by the GP Permit because the Permit does not provide adequate protection for existing and beneficial uses of receiving waters, such as the propagation of wildlife, fish, and aquatic life, a host of water contact uses such as swimming and diving, economically important activities such as fishing and tourism, and many other uses adversely affected by

this wastewater discharge. The GP Permit would also negatively affect the Petitioners because of the negative precedent it sets in terms of aquatic protection and application of state and federal water protections.

10.

The GP Permit would have a number of additional adverse effects on the organization petitioners that are organized for the purpose of protecting water quality and beneficial uses, including the water quality and uses affected by this discharge. A major component of achieving these goals is ensuring compliance with state and federal laws aimed to protect water quality, as well as public and environmental health. DEQ's issuance of permits, such as the GP Permit, that fail to comply with state and federal water protection laws adversely affects the ability of the organizational petitioners to achieve these goals.

### **BACKGROUND**

11.

The GP Permit is a National Pollutant Discharge Elimination System ("NPDES") permit covering wastewater discharges from the Georgia-Pacific secondary fiber pulp and paper mill in Toledo, Oregon and was issued by DEQ pursuant to the Clean Water Act and ORS 468B.050. The mill is located seven miles from the town of Newport along the most inland stretches of the Yaquina Bay. Treated, but highly concentrated, wastewater is pumped from the mill through Newport along the Yaquina River to an outfall approximately 3800' off Nye Beach, which is a heavily used shoreline and nearshore area for the City of Newport residents and visitors. During emergencies, the mill also discharges directly into the Yaquina River through a separate, additional outfall.

12.

The mill has a history of permit violations. DEQ is aware of seventeen different spills that occurred between April 2000 and October 2004. Pipe breaks have been reported

as recently as February 2006. In addition, measurements at the Yaquina River outfall site have revealed that on four different occasions pollution levels were in excess of those authorized by permit. Three properties owned by the mill near Toledo are designated by EPA as “brownfields” (DEQ’s ECSI Site ID’s 1228, 841 & 304). These three sites total hundreds of acres and portions drain into the Yaquina River and/or are subtidal. DEQ has not taken any enforcement action against Georgia-Pacific (other than issuing letters of non-compliance) to bring the mill into compliance with the terms of the permit.

13.

The previous permit for the mill expired on July 31, 2001. Georgia-Pacific requested renewal of the permit at the time of expiration, but DEQ failed to respond to the renewal request for four years. In August 2005, DEQ finally took action to renew the permit but failed to provide adequate public notice. As a result, DEQ was forced to reconsider the permit and reissue public notice to receive public comments.

14.

The renewed permit that is the subject of this Petition for Reconsideration was signed on July 14, 2006. Accordingly, this Petition is timely filed pursuant to OAR 137-004-0080.

### **GROUND FOR RECONSIDERATION**

15.

Concerned members of the public have filed comments and attended the public hearing in November 2005 regarding the GP Permit. While DEQ provided a response to public comments in issuing the GP Permit, the terms of the permit fail to address many of the concerns of Petitioners. In general, Petitioners allege that DEQ has failed to correct many of the problems detailed in public comments.

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The GP Permit issued by DEQ fails to meet the following requirements of state water quality laws:

**ORS 468B.020 Prevention of Pollution**

The GP Permit does not ensure the use of “all available and reasonable methods necessary” to meet the policy goals expressed in ORS 468B.015. For example, reasonable methods of monitoring pollutants, biological populations, bottom deposits, temperature, color, or turbidity in situ at the ocean outfall 001 have not been considered or employed. Moreover, there is no formal analysis presented to the public of existing and alternative treatment methods.

**OAR 340-041-0004 Antidegradation**

The GP Permit does not adhere to the antidegradation policy set forth in OAR 340-041-0004. The 2004 Batelle *Mixing Zone Study* and *Dye Study* conducted by the permittee’s consultant revealed that the company has been operating outside of its permitted 001 mixing zone and Zone of Initial Dilution (ZID). In response, the DEQ altered the parameters of the ZID. The ocean mixing zone was expanded from a single triangle, rotating with changes in ocean currents, with an area of +/- 1,171,283 square feet (+/- 27 acres) in the 1996 permit to a rectangle with an area of +/- 2,3000,000 square feet (+/- 53 acres) in the current permit. The ZID for the ocean outfall was expanded from 23’ in the 1996 permit to 45’ in the current permit.

An antidegradation review must be conducted where a mixing zone is sited in a new portion of a water body that has not been previously included in the mixing zone. OAR 340-041-0004(3)(a). In addition, the increase in pollutant concentration at the point of discharge at outfall 001 constitutes a decrease in water quality subject to an antidegradation review. The dilution factor of 66 parts of seawater to one part of effluent was reduced to a dilution

factor of 52, thereby decreasing the water quality in the ZID. Finally, the permit establishes a new ZID of 17' for Yaquina River outfall 003. This ZID authorizes acutely toxic conditions within an area where acutely toxic conditions were previously disallowed. This action is also subject to an antidegradation review.

Finally, DEQ has also allowed, without antidegradation review, the addition of a new source of pollution to outfall 001 in the form of leachate drained from ash derived from burning, among other trash components, plastics and medical waste at the Marion County landfill in Woodburn.

#### **OAR 340-041-0007 Statewide Narrative Criteria**

The NPDES Permit contains no provision to effectively ensure that the “highest and best practical treatment” of wastewater will be required under the proposed permit as required by OAR 340-041-0007(1).

The renewed permit fails to contain effluent limitations for two water quality parameters that are particularly relevant to the permitted site’s operations: turbidity and color. Oregon’s rules require the “highest and best practical treatment” to maintain the color and turbidity of GP’s effluent at the lowest possible level. OAR 340-041-007(14). Although monitoring is required in the permit, the GP Permit fails to require compliance with the narrative turbidity and color criteria. Based upon the verbal and written public comments received by DEQ from frequent beach and nearshore users in the Newport area, who described an intermittent “black plume” in the surf zone, it would appear that at times the discharge violates, at a minimum, Oregon’s aesthetic narrative standard. These public comments are supported by a June 2005 aerial photo taken by ODOT showing the “black plume” entering the surf zone in front of Newport’s tourist hotels. The source of the plume is consistent with the GPS coordinates of the GP 001 outfall given in the *Batelle Mixing Zone Study* (p 2.9). In addition, DEQ failed to conduct a Reasonable Potential Analysis (“RPA”)



with respect to turbidity according to the turbidity criteria set forth at OAR 340-041-0036. DEQ does not currently have data adequate to perform an RPA for turbidity, which is required prior to permit issuance.

**OAR 340-041-0009 Bacteria**

The GP Permit does not contain proper provisions to ensure that Oregon's water quality criteria for bacteria will be met. Data adequate to perform a RPA must be obtained prior to permit issuance. The Bacteria Monitoring Plan approved December 1, 2005 not only fails to set limits on bacterial discharge, but Schedule C of the GP Permit allows for a potential variance from management of the bacterial source if the variance is "not technically or economically feasible to control." Variance from controlling bacteria contamination is unacceptable. The permittee is required to abide by the Bacteria Numeric Criteria for Marine Waters under OAR 340-041-0009(1)(b). The GP Permit's lack of restriction on the discharge of bacteria is particularly alarming where public comment clearly indicated that Nye Beach is a heavily used coastal destination.

The GP Permit also fails to address potential bacteria in the effluent discharged from outfall 003. Considering that the Yaquina River is a 303(d)-listed water quality-limited body for fecal coliform, DEQ should determine if this source is contributing to the water-quality limited status of the river. OAR 340-041-0009(11).

**OAR 340-041-0011 Biocriteria**

The GP Permit lacks provisions to ensure that following biocriteria set forth in OAR 340-041-0011 will be met: "Waters of the State must be of sufficient quality to support aquatic species without detrimental changes in the resident biological communities." OAR 340-041-0002(72) explains that the phrase "without detrimental changes in the resident biological community" means no loss of ecological integrity when compared to natural conditions at an appropriate reference site or region. The GP Permit requires annual

monitoring of the health of the marine environment in the area of the discharge; however, there is no information detailing specific parameters to be evaluated or appropriate reference sites.

Furthermore, without requiring compliance with state water quality criteria for turbidity, coloration, bacteria, ongoing monitoring of benthic community health at the outfall areas, and other parameters the GP Permit cannot reasonably ensure that the biocriteria standard will be met. DEQ has indicated that for a number of water quality parameters (including persistent bioaccumulative toxics, whole effluent toxicity, monitoring of toxics) there is insufficient information for determining biological and ecological impacts in the receiving environment. For example, the whole effluent toxicity (WET) laboratory mortality monitoring of live marine species is carried out using the unreasonable dilution ratio of 100 parts of sea water to 1 part of effluent. DEQ in its response to public comments for the GP Permit states: “Results of GP’s WET tests demonstrated there were no acute affects at a dilution of 1% but tests were not performed at higher concentrations. Changes have been made to the permit to reflect the dilutions from the updated mixing zone study. Results from future WET tests will provide the appropriate data to determine compliance with acute toxicity.” DEQ Response to Public Comment at 5 (emphasis added).

#### **OAR 340-041-0016 Dissolved Oxygen**

DEQ water quality standards set forth a minimum, permissible level for dissolved oxygen (“DO”). The studies conducted to ascertain levels of DO at outfall sites fail to consider all relevant information. Moreover, there is new information and a change in circumstances from recent studies related to the existence of a “dead zone” within the area of the outfall sites that necessitates DEQ reconsider the terms of the GP Permit.

The RPA carried out for DO neglects to consider sources of nitrogen in the waste stream and variations of DO in the receiving water. The 2004 yearly Toxic Release Inventory

documents the release of 7,800 pounds of ammonia and 6,800 pounds of nitrates at ocean outfall 001. Leachate imported from the North Marion County landfill is high in ammonia and nitrate. The ambient DO is subtracted from the effluent DO and divided by the far field dilution as part of the calculation of the RPA for DO. In recent years the DO of the ambient water has varied widely especially during hypoxic events. Additionally, the leachate from Marion County is high in phosphorous and other biolimiting nutrients that could trigger plankton blooms leading to conditions of local hypoxia and resultant miscalculation of the DO gradient near the mixing zone.

Furthermore, the existence of new information related to the expansion of the dead zone off the Oregon coast into the area of the GP Permit outfalls necessitates DEQ reconsider the terms of the permit. The standards of the GP Permit state that “this permit may be modified, revoked and reissued, or terminated for cause including, but not limited to, the following: (c) A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge; ... (e) New information; ... (i) Determination that the permitted activity endangers human health or the environment.” GP Permit at Schedule F, Section A(5).

The dead zone off the Oregon Coast has occurred every year for the past five years. During the summer of 2006, the dead zone was expanded to include the nearshore ocean off the City of Newport. During the appearance of the dead zone in July and August of 2006, scientists from Oregon State University and the Oregon Department of Fish and Wildlife physically inspected the affected areas and measured dissolved oxygen (DO) levels as low as .05 milligrams per liter (mg/l), which is very close to a complete absence of oxygen. These were the lowest levels ever recorded off the Oregon Coast. The scientists described a “lifeless wasteland of thousands of dead crabs, and no live fish at all.” See “Dead zone startles scientists”, Oregonian, August 10, 2006 at B1.

The Batelle *Mixing Zone Study* (p.7-6) assumes ambient ocean oxygen levels of 8.48 mg/l to dilute the mill effluent, which has an average DO concentration of 1.02 mg/l and is considered hypoxic. There has been no study of how ocean mixing occurs when an average of 10.8 million gallons a day of hypoxic effluent is discharged into a receiving body that is also hypoxic. Given that this trend has persisted and ocean environmental conditions off Oregon have substantially deteriorated over the past 5 years, DEQ can not assume that the ambient DO in the 001 outfall receiving body of water will remain stable at 8.48 mg/l and that the mixing zone will function as modeled when hypoxic ocean conditions exist in the area of the outfall. This underscores the necessity of actual monitoring in Nye Basin, which is separated from the open sea by a reef, and for modification or termination of the effluent discharge in a timely manner when these low oxygen conditions exist in order not to compound low oxygen conditions deadly to marine life and to permit recovery of the marine environment as rapidly as possible. DEQ should detail, in the permit, the baseline receiving water conditions that ensure discharge safety based on mixing zone and other analyses for water quality based effluent limits. If ocean conditions are detected that exceed these bounds, DEQ should require the permittee to perform monitoring and analyses, in close consultation with DEQ authorities, to determine impacts and necessary corrective actions (including the temporary halt of discharge).

#### **OAR 340-041-0028 Temperature**

OAR 340-041-0028(7) states that “ocean and bay waters may not be warmed by more than 0.3 degrees Celsius (0.5 degrees Fahrenheit) above the ambient condition unless a greater increase would not reasonably be expected to adversely affect fish or other aquatic life.” The maximum temperature differential between the effluent and ambient seawater at outfall 001 from 1998 to 2004 was 19.8 degrees Celsius (Battelle Mixing Zone Study). This differential would require a dilution factor of 66. The dilution calculations performed by

DEQ cannot adequately predict temperature in the mixing zone without in situ measurements. There is currently no temperature limitation in the NPDES permit.

**OAR 340-041-0036 Turbidity**

Pursuant to OAR 340-041-0036, the turbidity of the permitted discharge may not exceed the background of the receiving water body by more than ten percent. Due to the lack of turbidity data, DEQ has requested a monitoring plan, but has failed to require compliance with the numeric turbidity criteria as a term of the permit. In addition, the GP Permit should require the permittee to monitor and ensure compliance with the turbidity criteria at outfall 003 as well as outfall 001.

**OAR 340-041-0053(2)(a) Objectionable Deposits**

DEQ failed to determine whether the discharge is creating an “objectionable deposit” in the vicinity of the Nye Beach outfall site. Such deposits are prohibited by OAR 340-041-0053, which mandates that DEQ may suspend or reduce water quality standards in mixing zones provided that materials will not settle into objectionable deposits. OAR 340-041-0053(2)(a)(B). At times the diffuser array is covered by sand in variable amounts. For example, Page 6 of the DEQ *Permit Evaluation and Fact Sheet* states that 9 of the 14 diffuser ports in the southern leg of the diffuser are permanently buried under sand. Page 10 of the same document states that “the model assumes all ports are functioning.” Once covered by sand, the velocity of the flow from the diffuser port is curtailed. The effluent is no longer projected into the water column but, for an undetermined length of time, dribbles into the sand until flow is completely blocked. As a result, effluent is trapped in the sand, and various deleterious substances likely bioaccumulate in benthic populations such as crabs, shrimp, worms, clams, sole, and flounder that live in or on the sand.

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### **OAR 340-041-0053(2)(c) Free Passage**

Pursuant to OAR 340-041-0053(2)(c)(C), DEQ must define a mixing zone in the area of wastewater discharge to “minimize adverse effects on the indigenous biological community, especially when species are present that warrant special protection for their economic importance, tribal significance, ecological uniqueness, or other similar reasons determined by the Department and does not block the free passage of aquatic life.” The DEQ must include not only free-swimming nekton, but all of the “indigenous biological community” including sessile marine algae and benthic populations in its analysis. Furthermore, the rocky reefs just seaward of outfall 001 warrant protection for their ecological uniqueness as essential fish habitat for black rockfish. Fishing, particularly nearshore crabbing, is economically important to the city of Newport. According to the response to public comments, there has been no consultation with federal or state wildlife agencies regarding impacts to essential fish habitat protection.

### **OAR 340-041-0053(2)(c) Other Mixing Zone Criteria**

Permit materials do not demonstrate compliance with other mixing zone criteria set forth in OAR 340-041-0053(2)(c). Mixing zones are required to be “as small as feasible,” “not threaten public health,” and “minimize adverse effects on other designated beneficial uses outside the mixing zone.” The Batelle *Mixing Zone Study*, conducted by a Georgia-Pacific consultant, revealed that the mill was operating outside of its allowable mixing zone. DEQ’s response is to change the parameters of the mixing zone. However, in doing so, DEQ fails to adequately consider less environmentally damaging alternatives and does not provide enough information to determine whether the permitted mixing zone complies with state mandated criteria.

For example, the RPA for primary pollutants was not carried out in “worst case” conditions. The effluent flow was below average, the chemical scan did not include many of

the compounds reported in the toxic release inventories, and the dilution study was performed under uncharacteristically calm conditions. While the thermally stratified sea water on July 26, 2004 may have represented, as the Battelle study claims, a worst case scenario for vertical advection, the extremes of environmental and oceanographic conditions in the Nye beach littoral zone were not considered. Tidal reversals, fluctuating wave climate, ambient sand transport, variable rip currents, fluctuating longshore currents, and high velocity winds were not considered.

Given the abundant personal observations reported by frequent beach and nearshore users in public comments for this permit, along with the June 2005 ODOT aerial photo attached illustrating the “black plume” of partially diluted effluent entering the surf zone at Newport beaches, the potential for the effluent to threaten public health exists. During periodic occurrences when the effluent is driven towards the beach, beach and nearshore users could be exposed to lead and other priority pollutants in the undiluted effluent through water contact, contact with wet sand and/or inhalation of ocean spray. Schedule F, section B, #7 of the GP Permit requires public notification of effluent violations or overflows; however, this public notice has never occurred with either the effluent entering the surf zone nor pipeline breaks on land. The public using the beach has the right to be informed when they are exposed to less than fully diluted industrial effluent, which will require actual monitoring in Nye Basin and posting of health advisories.

17.

The GP Permit fails to address the impact of the importation of leachate from the North Marion County Disposal Facility. Since December 2000, the mill has received leachate consisting of liquid and suspended material that has percolated through or drained through ash derived from burning of trash containing plastics and medical wastes. In 2004, Marion County paid Georgia Pacific \$800,000 to dispose of eight million gallons of leachate

with elemental phosphorus levels that exceeded the marine chronic standard and a composition of nitrogen, heavy metals and halogenated hydrocarbons that were significantly different from the composition of the effluent covered in the existing NPDES permit. Neither the fact that leachate was being imported for disposal off Newport, nor the impacts of the leachate upon effluent composition and the mixing zone were addressed in DEQ documents or in the Batelle *Mixing Zone Study*. The DEQ administrative approval of a new waste stream, and profit center, unrelated to the pulp mill process, without public disclosure or environmental analysis was one of the most contentious aspects of the permit renewal raised by citizens speaking at the November 2, 2005 public hearing in Toledo. DEQ's *Response to Public Comments* framed this omission as an "oversight" and failed to respond to the concerns expressed by the public.

The importation and discharge of the leachate is a new source of pollution. The disposal of unrelated waste necessitates a revised, or wholly independent, permit with parameters relevant to the amount and composition of the leachate. The authorization to import and dispose of significant quantities of leachate under the renewed permit is also a violation of the anti- backsliding (33 U.S.C. § 1342(o)) and anti-degradation (OAR 340-041-0004) provisions of state and federal law, which prohibit the degradation of water quality from new or increase sources of point and non-point pollution.

18.

The GP Permit also fails to meet additional federal requirements. DEQ has not established that there is sufficient data to adhere to Ocean Discharge Guidelines under the Clean Water Act. 33 U.C.S. § 1343. The Clean Water Act states that "no permit shall be issued" where there is insufficient information on criteria such as the "effect of disposal of pollutants on human health or welfare, including but not limited to plankton, fish, shell fish, wildlife, shorelines, and beaches" and the "persistence and permanence of the effects of



disposal of pollutants.” 33 U.S.C. § 1343. The lack of data on the discharge of bacteria, the effects of potential objectionable deposits, and the presence of the “black plume” of undiluted industrial effluent entering the surf zone at highly used recreational beaches preclude DEQ from issuing this NPDES permit.

19.

The GP Permit violates 40 CFR § 125.122 by failing to include all determinations necessary to conclude that the permitted discharge will not cause unreasonable degradation of the marine environment. For example, the permit fails to include “the quantities, composition and potential for bioaccumulation or persistence of the pollutants to be discharged.” 40 CFR § 125.122(1).

20.

The GP Permit violates 40 CFR § 122.41(j) by including a monitoring plan that is insufficient to determine bioaccumulation or persistence of toxins. The permit does not include benthic surveys or ambient sediment analysis to determine the potential of objectionable deposits from outfall 001. The permit also fails to include proper monitoring of the effluent in receiving waters to detect potential detrimental impacts.

21.

DEQ as a state agency is required to carry out its planning duties, powers, and responsibilities, and take actions that are authorized by law with respect to programs affecting land use, in compliance with statewide planning goals and in a manner compatible with acknowledged comprehensive plans. ORS 197.180. Because DEQ has not addressed compliance with the statewide planning goals in either the permits or the public comment process, Petitioners have not had an opportunity to analyze and comment on specific goal compliance issues. Specifically, Petitioners request an analysis of compliance with: Statewide Goal 6, “to maintain and improve the quality of air, water and land resources of the

state”; and Statewide Goal 19, “to conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic and social value and benefits to future generations.” DEQ fails to address how the GP Permit’s allowance of waste discharge into the nearshore ocean is consistent with Goals 6 and 19.

22.

In issuing the GP Permit, DEQ has failed to provide critical information to the public regarding the potential impacts of the permit. None of the documents related to the permit issuance show the locations of the two "conveyance units" ("pipelines") approved by the DEQ as part of this permit. Portions of both pipelines run with county road easements over private property through areas where shallow wells are the only source of water for all domestic use. Because title companies in Lincoln County do not show the nature of "utilities" running with county roads on title reports, homeowners, buyers, real estate professionals and even County departments responsible for permitting may have no idea these pipelines are located on a given property. A "utility" of this nature is unusual and should be considered a material fact that would require disclosure, particularly if an industrial effluent spill had occurred at any time in the past.

DEQ has not made maps of the pipeline locations available for the public or consulting government agencies. When requested, DEQ was unable to provide records of the spill locations. The proposed monitoring plan is inadequate because all property owners burdened by these pipeline easements have not received notice of the pipeline location running with county roads on their properties.

### **REQUEST FOR RECONSIDERATION**

23.

Pursuant to ORS 183.480 and 183.484, Petitioners hereby request that DEQ withdraw the GP Permit as issued and prepare a new draft permit consistent with state and federal law.

This new permit should provide meaningful standards and monitoring requirements consistent with legal requirements for protecting water quality and designated uses.

DATED: September 8, 2006.

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On Behalf of Petitioners