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July 31, 2018

VIA U.S. MAIL / ELECTRONIC TRANSMISSION

Mr. Grant Pfeifer
Regional Director, Eastern Regional Office
Washington Department of Ecology
4601 North Monroe Street
Spokane, Washington 99205

RE: Department of Ecology's Commencement of Environmental Review Process for HiTest Sand / PacWest's Silicon Smelter

Dear Mr. Pfeifer:

This office represents Responsible*Growth Northeast Washington ("RE*GROW"), which consists of Pend Oreille County residents and landowners located adjacent to or in the immediate vicinity of the industrial facility proposed by HiTest Sand/PacWest (hereinafter referred to as "PacWest"). These comments are also joined in by Citizens Against Newport Silicon Smelter ("CANSS"), which is represented by the law firm of Parsons Behle & Latimer.

As you are aware, PacWest has submitted a letter to Ecology requesting that the agency commence the State Environmental Policy Act ("SEPA") process for a potential silicon smelter in Newport, Washington. Ecology has responded positively to this request and taken the responsibility to act as the lead agency for the SEPA process. Additionally, published information from your website indicates that you are preparing to make a threshold determination of significance on this project in furtherance of environmental review.

In light of the initiation of this process, our clients have the following questions, concerns, and requests regarding the SEPA process:

1. **Inadequate Proposal:** We believe there is a significant, unresolved question regarding the timing of the SEPA process and whether Ecology's authority under SEPA has been triggered yet. SEPA is triggered by a proposal which is defined as a proposed action "where an agency is presented with an application or has a goal and is actively preparing to make a decision . . . and the environmental effects can be meaningfully evaluated." WAC 197-11-784. Additionally, in WAC 197-11-716 an application is defined as a request for license, while license is defined as "any form of written permission . . . to engage in any activity . . . [and] . . . includes all or part of an agency permit." WAC 197-11-760. Finally, an "agency" is defined as any state or local

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governmental body. WAC 197-11-714. There has been no "application" filed by PacWest, seeking "written permission" from any state or local agency yet, nor is there any agency "actively preparing to make a decision" on a permit or license. This is made clear in the letter from PacWest to Ecology stating, "PacWest wishes to accelerate the SEPA process by launching the public scoping process for an EIS prior to submitting any applications for licenses or permits." See Letter to Department of Ecology from PacWest (June 5, 2018). As a result, there has been no proposal and there is no authority to prematurely commence the SEPA process as Ecology has done here. As a state agency, Ecology has only the authority granted to it. We request that Ecology provide the legal basis for proceeding with the SEPA process prematurely or, in the alternative, Ecology must cease and desist from taking any further action pursuant to SEPA, until such time that a state or local governmental body is presented with an application by PacWest. Failure to do so may result in legal action being taken against Ecology.

2. Scoping: Ecology should use an expanded scoping process to ensure that all potential impacts are identified before the Environmental Impact Statement ("EIS") drafting begins. The proposal letter from PacWest that initiated this action was only three pages long – clearly an inadequate amount of space to detail all of the potential environmental impacts that will undoubtedly result from such a large industrial project. Pursuant to WAC 197-11-410, the lead agency can choose to do expanded scoping in order to promote public participation. Additionally, we would like to remind Ecology that the goals of SEPA encourage the public's participation in such matters. WAC 197-11-030(2)(f).
3. Public Hearing on Scoping: Although the Department has indicated numerous times that public participation will be solicited, we request that Ecology conduct public hearings in Newport, Usk, and Spokane as that would be the best method to hear all citizens' concerns and comments about the ultimate results of the scoping process. You state that the lead agency "can use expanded scoping that might include public meetings, surveys, and other methods to involve the public in the process." Department of Ecology Website – PacWest Silicon Smelter Project. We believe that the scope of the EIS is important enough for a public hearing, and that a decision to hold a public hearing would assist the agency and the public, as well as substantially increase the efficiency on the requirement of public comments. WAC 197-11-502; WAC 197-11-408; WAC 197-11-410. Under WAC 197-11-502 (4)(c), "[t]he lead agency determines the method for commenting" and we believe that a means to increase the efficiency of the SEPA process should be utilized. WAC 197-11-502 (4)(c) (citing to WAC 197-11-408 and 197-11-410).
4. Notice of Lawsuit: In addition to our concerns listed above, Ecology should be aware of the ongoing lawsuit filed by our client against PacWest, Pend Oreille County, and Pend Oreille County Public Utility District ("PUD"), regarding the validity of the sale of land where PacWest is currently proposing to build its smelter. Should the State Superior Court void the land sale transactions between the County, PUD and PacWest, that would void the need for any of the lengthy and expensive SEPA process? Given this legal circumstance, the proposal from PacWest is not substantially concrete enough to warrant any detailed evaluation by Ecology at this time.

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We appreciate your consideration of these questions, concerns, and requests on behalf of RE*GROW, CANSS, and their members, and we look forward to your response. Please ensure that this letter is made part of the agency record in this matter and include us on any public notices about this project.

Sincerely,

UNIVERSITY LEGAL ASSISTANCE



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