

GRANTOR:

State of Washington
Department of Natural Resources
Northwest Region
919 North Township Street
Sedro-Woolley, WA 98284

GRANTEE:

Equilon Enterprises, LLC
dba Shell Oil Products US
PO Box 622
600 South Texas Road
Anacortes, WA 98221-0622

REVIEWED BY
SKAGIT COUNTY TREASURER
DEPUTY Lena Thompson
DATE 10/20/2021

WHEN RECORDED. RETURN TO:

First American Title NCS
601 Travis Street, Suite 1875
Houston, Texas 77002
Attn: Jan Ruiz
NCS: 988973

**AQUATIC LANDS LEASE
(COMMERCIAL)**

Legal: Portion of Fidalgo Bay Bedlands Adjacent to Sec's 20 and 29, T.35 N. R. 2 R. W.M., Skagit County, WA.

DNR Lease No.: 20-A12561

Parcel No.: No parcel number per the Skagit County Assessor's Office.

**STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
DOUG SUTHERLAND, Commissioner of Public Lands**

**AQUATIC LANDS LEASE
(Commercial)**

AQUATIC LANDS LEASE NO. 20-A12561

THIS LEASE is made by and between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and EQUILON ENTERPRISES, L.L.C (registered in the state of Delaware), d.b.a, SHELL OIL PRODUCTS US, a limited liability Company ("Tenant").

BACKGROUND

Tenant desires to lease the aquatic lands commonly known as Fidalgo Bay, which are bedlands located in Skagit County, Washington, from State, and State desires to lease the property to Tenant pursuant to the terms and conditions of this Lease.

THEREFORE, the parties agree as follows:

SECTION 1 PROPERTY

1.1 Property Defined. State leases to Tenant and Tenant leases from State the real property described in Exhibit A together with all the rights of State, if any, to improvements on and easements benefiting the Property, but subject to the exceptions and restrictions set forth in this Lease (collectively the "Property"). This Lease is subject to all valid interests of third parties noted in the records of Skagit County, or on file in the office of the Commissioner of Public Lands, Olympia, Washington; rights of the public under the Public Trust Doctrine or federal navigation servitude; and treaty rights of Indian Tribes. Not included in this Lease are any right to harvest, collect or damage any natural resource, including aquatic life or living plants, any water rights, or any mineral rights, including any right to excavate or withdraw sand, gravel, or other valuable materials. State reserves the right to grant easements and other land uses on the Property to others when the easement or other land uses will not unreasonably interfere with Tenant's Permitted Use.

1.2 Survey, Maps, and Plans. In executing this Lease, State is relying on the surveys, plats, diagrams, and/or legal descriptions provided by Tenant. Tenant is not relying upon and State is not making any representations about any survey, plat, diagram, and/or legal description provided by State.

1.3 Inspection. State makes no representation regarding the condition of the Property, improvements located on the Property, the suitability of the Property for Tenant's Permitted Use, compliance with governmental laws and regulations, availability of utility rights, access to the Property or the existence of hazardous substances on the Property. Tenant has inspected the Property and accepts it "AS IS."

SECTION 2 USE

2.1 Permitted Use. Tenant shall use the Property for a crude oil and petroleum product transfer (the "Permitted Use"), and for no other purpose. The Permitted Use is described or shown in greater detail in Exhibit B, the terms and conditions of which are incorporated by reference and made a part of this Lease. The parties agree that this is a water-dependent use.

2.2 Restrictions on Use. Tenant shall not cause or permit any damage to natural resources on the Property. Tenant shall also not cause or permit any filling activity to occur on the Property. This prohibition includes any deposit of rock, earth, ballast, refuse, garbage, waste matter (including chemical, biological or toxic wastes), hydrocarbons, any other pollutants, or other matter in or on the Property, except as approved in writing by State. Tenant shall neither commit nor allow waste to be committed to or on the Property. If Tenant fails to comply with all or any of the restrictions on the use of the Property set out in this Subsection 2.2, State shall notify Tenant and provide Tenant a reasonable time to take all steps necessary to remedy the failure. If Tenant fails to do so in a timely manner, then State may take any steps reasonably necessary to remedy this failure. Upon demand by State, Tenant shall pay all costs of such remedial action, including but not limited to the costs of removing and disposing of any material deposited improperly on the Property. This section shall not in any way limit Tenant's liability under Section 8, below.

2.3 Conformance with Laws. Tenant shall, at all times, keep current and comply with all conditions and terms of any permits, licenses, certificates, regulations, ordinances, statutes, and other government rules and regulations regarding its use or occupancy of the Property.

2.4 Liens and Encumbrances. Tenant shall keep the Property free and clear of any liens and encumbrances arising out of or relating to its use or occupancy of the Property.

SECTION 3 TERM

3.1 Term Defined. The term of this Lease is Thirty (30) years (the "Term"), beginning on the 1st day of September 2004 (the "Commencement Date"), and ending on the 31st day of August 2034 (the "Termination Date"), unless terminated sooner under the terms of this Lease.

3.2 Renewal of the Lease. Tenant shall have the option to renew this Lease for Zero (0) additional terms of Zero (0) years each. The initial Term of this Lease, and all

renewal terms, shall not exceed Thirty (30) years in the aggregate. Tenant shall exercise this option by providing written notice of its election to renew at least ninety (90) days prior to the Termination Date of the initial Term or any renewal term of this Lease. Tenant shall not be entitled to renew if it is in default under the terms of this Lease at the time the option to renew is exercised. The terms and conditions of any renewal term shall be the same as set forth in this Lease, except that rent shall be recalculated, the required amounts of financial security may be revised, and provisions dealing with hazardous waste or impacts to natural resources may be changed at the time of the renewal.

3.3 Delay in Delivery of Possession. If State, for any reason whatsoever, cannot deliver possession of the Property to Tenant on the Commencement Date, this Lease shall not be void or voidable, nor shall State be liable to Tenant for any loss or damage resulting from the delay in delivery of possession. In such event, the date of delivery of possession shall be the Commencement Date for all purposes, including the payment of rent. In the event Tenant takes possession before the Commencement Date, the date of possession shall be the Commencement Date for all purposes, including the payment of rent. If the Lease Term commences earlier or later than the scheduled Commencement Date, the Termination Date shall be adjusted accordingly.

3.4 End of Term. Upon the expiration or termination of the Term or extended term, as applicable, Tenant shall surrender the Property to State in the same or better condition as on the Commencement Date, reasonable wear and tear excepted.

3.5 Hold Over. If Tenant remains in possession of the Property after the Termination Date, the occupancy shall not be an extension or renewal of the Term. The occupancy shall be a month-to-month tenancy, on terms identical to the terms of this Lease, which may be terminated by either party on thirty (30) days written notice. The monthly rent during the holdover shall be the same rent which would be due if the Lease were still in effect and all adjustments in rent were made in accordance with its terms. If State provides a notice to vacate the Property in anticipation of the termination of this Lease or at any time after the Termination Date and Tenant fails to do so within the time set forth in the notice, then Tenant shall be a trespasser and shall owe the State all amounts due under RCW 79.01.760 or other applicable law.

SECTION 4 RENT

4.1 Annual Rent. Until adjusted as set forth below, Tenant shall pay to State an annual rent of Thirteen Thousand Five Hundred Eighty Three Dollars and 59/100 (\$13,583.59). The annual rent, as it currently exists or as adjusted or modified (the "Annual Rent"), shall be due and payable in full on or before the Commencement Date and on or before the same date of each year thereafter.

4.2 Payment Place. Payment is to be made to Financial Management Division, 1111 Washington St SE, PO Box 47041, Olympia, WA 98504-7041.

4.3 Adjustment Based on Use. Annual Rent is based on Tenant's Permitted Use of the Property, as described in Section 2 above. If Tenant's Permitted Use changes, the Annual Rent shall be adjusted as appropriate for the changed use.

4.4 Rent Adjustments for Water-Dependent Uses.

- (a) **Inflation Adjustment.** State shall adjust water-dependent rent annually pursuant to RCW 79.90.450 -902, except in those years in which the rent is revalued under Subsection 4.4(b) below. This adjustment shall be effective on the anniversary of the Commencement Date.
- (b) **Revaluation of Rent.** State shall, at the end of the first four-year period of the Term, and at the end of each subsequent four-year period, revalue the water-dependent Annual Rent in accordance with RCW 79.90.450-.902.
- (c) **Rent Cap.** After the initial year's rent is determined under Subsection 4.1, rent may increase by operation of Subsection 4.4(a) or 4.4(b). If application of the statutory rent formula for water-dependent uses would result in an increase in the rent attributable to such uses of more than fifty percent (50%) in any one year, the actual increase implemented in such year shall be limited to fifty percent (50%) of the then-existing rent, in accordance with RCW 79.90.490. The balance of the increase determined by the formula shall be deferred to subsequent years and added to the next and subsequent years' rental increases until the full amount of the increase is lawfully implemented.

4.5 Rent Adjustment Procedures.

- (a) **Notice of Rent Adjustment.**
Notice of any adjustments to the Annual Rent that are allowed by Subsection 4.4 (b) shall be provided to Tenant in writing no later than ninety (90) days after the anniversary date of the Lease.
- (b) **Procedures on Failure to make Timely Adjustment.**
In the event the State fails to provide the notice required in Subsection 4.4 (a), it shall be prohibited from collecting any adjustments to rent only for the year in which it failed to provide notice. No failure by State to adjust Annual Rent pursuant to Subsection 4.4 (a) shall affect the State's right to establish Annual Rent for a subsequent lease year as if the missed or waived adjustment had been implemented. The State may adjust, bill, and collect Annual Rent prospectively as if any missed or waived adjustments had actually been implemented. This includes the implementation of any inflation adjustment and any rent revaluations that would have been authorized for previous lease years.

SECTION 5 OTHER EXPENSES

During the Term, Tenant shall pay the following additional expenses:

5.1 Utilities. Tenant shall pay all fees charged for utilities in connection with the use and occupancy of the Property, including but not limited to electricity, water, gas, and telephone service.

5.2 Taxes and Assessments. Tenant shall pay all taxes (including leasehold excise taxes), assessments, and other governmental charges, of any kind whatsoever, applicable or attributable to the Property, Tenant's leasehold interest, the improvements, or Tenant's use and enjoyment of the Property.

5.3 Right to Contest. Tenant may, in good faith, contest any tax or assessment at its sole cost and expense. At the request of State, Tenant shall furnish reasonable protection in the form of a bond or other security, satisfactory to State, against any loss or liability by reason of such contest.

5.4 Proof of Payment. Tenant shall, if required by State, furnish to State receipts or other appropriate evidence establishing the payment of any amounts required to be paid under the terms of this Lease.

5.5 Failure to Pay. If Tenant fails to pay any of the amounts due under this Lease, State may pay the amount due, and recover its cost in accordance with the provisions of Section 6.

SECTION 6 LATE PAYMENTS AND OTHER CHARGES

6.1 Late Charge. If any rental payment is not received by State within ten (10) days of the date due, Tenant shall pay to State a late charge equal to four percent (4%) of the amount of the payment or Fifty Dollars (\$50), whichever is greater, to defray the overhead expenses of State incident to the delay.

6.2 Interest Penalty for Past Due Rent and Other Sums Owed. If rent is not paid within thirty (30) days of the date due, then Tenant shall, in addition to paying the late charges determined under Subsection 6.1, above, pay interest on the amount outstanding at the rate of one percent (1%) per month until paid. If State pays or advances any amounts for or on behalf of Tenant, including but not limited to leasehold taxes, taxes, assessments, insurance premiums, costs of removal and disposal of unauthorized materials pursuant to Section 2 above, costs of removal and disposal of improvements pursuant to Section 7 below, or other amounts not paid when due, Tenant shall reimburse State for the amount paid or advanced and shall pay interest on that amount at the rate of one percent (1%) per month from the date State notifies Tenant of the payment or advance.

6.3 No Accord and Satisfaction. If Tenant pays, or State otherwise receives, an amount less than the full amount then due, State may apply such payment as it elects. In the absence of an election, the payment or receipt shall be applied first to accrued taxes which State has advanced or may be obligated to pay, then to other amounts advanced by State, then to late charges and accrued interest, and then to the earliest rent due. State may accept any payment in any amount without prejudice to State's right to recover the balance of the rent or pursue any other right or remedy. No endorsement or statement on any check, any payment, or any letter accompanying any check or payment shall constitute or be construed as accord and satisfaction.

6.4 No Counterclaim, Setoff, or Abatement of Rent. Except as expressly set forth elsewhere in this Lease, rent and all other sums payable by Tenant pursuant to this Lease shall be paid without the requirement that State provide prior notice or demand, and shall not be subject to any counterclaim, setoff, deduction, defense or abatement.

SECTION 7 IMPROVEMENTS

7.1 Existing Improvements. On the Commencement Date, the following improvements are located on the Property: Docks and wharf structure supported by pilings. The improvements are not owned by State "Existing Improvements."

7.2 Tenant-Owned Improvements. So long as this Lease remains in effect, Tenant shall retain ownership of all Existing Improvements, and all authorized improvements and trade fixtures it may place on the Property (collectively "Tenant-Owned Improvements"). Tenant-Owned Improvements shall not include any construction, reconstruction, alteration, or addition to any Unauthorized Improvements as defined in Subsection 7.5 below. No Tenant-Owned Improvements shall be placed on the Property without State's prior written consent.

7.3 Construction. Prior to any construction, alteration, replacement, removal or major repair of any improvements (whether State-Owned or Tenant-Owned), Tenant shall submit to State plans and specifications which describe the proposed activity. Construction shall not commence until State has approved those plans and specifications in writing and Tenant has obtained a performance and payment bond in an amount equal to 125% of the estimated cost of construction. The performance and payment bond shall be maintained until the costs of construction, including all laborers and material persons, have been paid in full. State shall have sixty (60) days in which to review the proposed plans and specifications. The plans and specifications shall be deemed approved and the requirement for State's written consent shall be treated as waived, unless State notifies Tenant otherwise within the sixty (60) days. Upon completion of construction, Tenant shall promptly provide State with as-built plans and specifications. State's consent and approval shall not be required for any routine maintenance or repair of improvements made by the Tenant pursuant to its obligation to maintain the Property in good order and repair that does not result in the construction, alteration, replacement, removal, or major repair of any improvements on the Property.

7.4 Removal. Tenant-Owned Improvements shall be removed by Tenant by the Termination Date unless State notifies Tenant that the Tenant-Owned Improvements may remain. If the State elects for the Tenant-Owned Improvements to remain on the Property after the Termination Date, they shall become the property of State without payment by State (if the provisions of RCW 79.94.320 or RCW 79.95.040 apply, Tenant shall be entitled to the rights provided in the statute). To the extent that Tenant-Owned Improvements include items of personal property which may be removed from the leasehold premises without harming the Property, or diminishing the value of the Property or the improvements, the State asserts no ownership interest in these improvements unless the parties agree otherwise in writing upon termination of this Lease. Any Tenant-Owned Improvements specifically identified as personal property in Exhibit A or B shall be treated in accordance with this provision. Tenant shall notify State at least one hundred eighty (180) days before the Termination Date if it intends to leave the Tenant-Owned Improvements on the Property. State shall then have ninety (90) days in which to notify Tenant that it wishes to have the Tenant-Owned Improvements removed or elects to have them remain. Failure to notify Tenant shall be deemed an election by State that the Tenant-Owned Improvements will remain on the Property. If the Tenant-Owned Improvements remain on the Property after the Termination Date without State's actual or deemed consent, they still will become the property of the State but the State may remove them and Tenant shall pay the costs of removal and disposal upon State's demand.

7.5 Unauthorized Improvements. Improvements made on the Property without State's prior consent pursuant to Subsection 7.3 or which are not in conformance with the plans submitted to and approved by State ("Unauthorized Improvements") shall immediately become the property of State, unless State elects otherwise. Regardless of ownership of Unauthorized Improvements, State may, at its option, require Tenant to sever, remove, and dispose of them, charge Tenant rent for the use of them, or both. If Tenant fails to remove an Unauthorized Improvement upon request, State may remove it and charge Tenant for the cost of removal and disposal.

SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION

8.1 Definition. "Hazardous Substance" means any substance which now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination or cleanup, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 *et seq.*, and Washington's Model Toxics Control Act ("MTCA"), RCW 70.105D.010 *et seq.*

8.2 Use of Hazardous Substances. Tenant covenants and agrees that Hazardous Substances will not be used, stored, generated, processed, transported, handled, released, or disposed of in, on, under, or above the Property, except in accordance with all applicable laws.

8.3 Current Conditions, Duty of Utmost Care, and Duty to Investigate.

- (a) State makes no representation about the condition of the Property. Hazardous Substances may exist in, on, under, or above the Property. With regard to any Hazardous Substances that may exist in, on, under, or above the Property, State disclaims any and all responsibility to conduct investigations, to review any State records, documents or files, or to obtain or supply any information to Tenant.
- (b) Tenant shall exercise the utmost care with respect to both Hazardous Substances in, on, under, or above the Property as of the Commencement Date, and any Hazardous Substances that come to be located in, on, under, or above the Property during the Term of this agreement, along with the foreseeable acts or omissions of third parties affecting those Hazardous Substances, and the foreseeable consequences of those acts or omissions. The obligation to exercise utmost care under this Subsection 8.3 includes, but is not limited to, the following requirements:
- (1) Tenant shall not undertake activities that will cause, contribute to, or exacerbate contamination of the Property;
 - (2) Tenant shall not undertake activities that damage or interfere with the operation of remedial or restoration activities on the Property or undertake activities that result in human or environmental exposure to contaminated sediments on the Property;
 - (3) Tenant shall not undertake any activities that result in the mechanical or chemical disturbance of on-site habitat mitigation;
 - (4) If requested, Tenant shall allow reasonable access to the Property by employees and authorized agents of the Environmental Protection Agency, the Washington State Department of Ecology, or other similar environmental agencies; and
 - (5) If requested, Tenant shall allow reasonable access to potentially liable or responsible parties who are the subject of an order or consent decree which requires access to the Property. Tenant's obligation to provide access to potentially liable or responsible parties may be conditioned upon the negotiation of an access agreement with such parties, provided that such agreement shall not be unreasonably withheld.
- (c) It shall be Tenant's obligation to gather sufficient information concerning the Property and the existence, scope, and location of any Hazardous Substances on the Property, or adjoining the Property, that allows Tenant to effectively meet its obligations under this lease.

8.4 Notification and Reporting.

- (a) Tenant shall immediately notify State if Tenant becomes aware of any of the following:
- (1) A release or threatened release of Hazardous Substances in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property;
 - (2) Any problem or liability related to, or derived from, the presence of any Hazardous Substance in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property;
 - (3) Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances with respect to the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property;
 - (4) Any lien or action with respect to any of the foregoing; or,
 - (5) Any notification from the US Environmental Protection Agency (EPA) or the Washington State Department of Ecology (DOE) that remediation or removal of Hazardous Substances is or may be required at the Property.
- (b) Upon request, Tenant shall provide State with copies of any and all reports, studies, or audits which pertain to environmental issues or concerns associated with the Property, and which were prepared for Tenant and submitted to any federal, state or local authorities pursuant to any federal, state or local permit, license or law. These permits include, but are not limited to, any National Pollution Discharge and Elimination System Permit, any Army Corps of Engineers permit, any State Hydraulics permit, any State Water Quality certification, or any Substantial Development permit.

8.5 Indemnification.

- (a) Tenant shall fully indemnify, defend, and hold State harmless from and against any and all claims, demands, damages, natural resource damages, response costs, remedial costs, cleanup costs, losses, liens, liabilities, penalties, fines, lawsuits, other proceedings, costs, and expenses (including attorneys' fees and disbursements), that arise out of, or are in any way related to:

- (1) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Tenant, its subtenants, contractors, agents, employees, guests, invitees, or affiliates in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property, during the Term of this Lease or during any time when Tenant occupies or occupied the Property or any such other property;
- (2) The release or threatened release of any Hazardous Substance, or the exacerbation of any Hazardous Substance contamination, in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property, which release, threatened release, or exacerbation occurs or occurred during the Term of this Lease or during any time when Tenant occupies or occupied the Property or any such other property, and as a result of:
- (i) Any act or omission of Tenant, its subtenants, contractors, agents, employees, guests, invitees, or affiliates; or,
 - (ii) Any foreseeable act or omission of a third party unless Tenant exercised the utmost care with respect to the foreseeable acts or omissions of the third party and the foreseeable consequences of those acts or omissions.
- (b) In addition to the indemnifications provided in Subsection 8.5(a), Tenant shall fully indemnify State for any and all damages, liabilities, costs or expenses (including attorneys' fees and disbursements) that arise out of or are in any way related to Tenant's breach of the obligations of Subsection 8.3(b). This obligation is not intended to duplicate the indemnity provided in Subsection 8.5(a) and applies only to damages, liabilities, costs, or expenses that are associated with a breach of Subsection 8.3(b) and which are not characterized as a release, threatened release, or exacerbation of Hazardous Substances.

8.6 Cleanup. If a release of Hazardous Substances occurs in, on, under, or above the Property, or other State-owned property, arising out of any action, inaction, or event described or referred to in Subsection 8.5, above, Tenant shall, at its sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substances. Cleanup actions shall include, without limitation, removal, containment and remedial actions and shall be performed in accordance with all applicable laws, rules, ordinances, and permits. Tenant's obligation to undertake a cleanup under this Subsection 8.6 shall be limited to those instances where the Hazardous Substances exist in amounts that exceed the threshold limits of any applicable regulatory cleanup standards. Tenant shall also be solely responsible for all cleanup, administrative, and enforcement costs of

governmental agencies, including natural resource damage claims, arising out of any action, inaction, or event described or referred to in Subsection 8.5, above. Tenant may undertake a cleanup pursuant to the Washington State Department of Ecology's Voluntary Cleanup Program, provided that: (1) Any cleanup plans shall be submitted to State (DNR) for review and comment at least thirty (30) days prior to implementation (except in emergency situations), and (2) Tenant must not be in breach of this lease. Nothing in the operation of this provision shall be construed as an agreement by State that the voluntary cleanup complies with any laws or with the provisions of this Lease.

8.7 Sampling by State, Reimbursement, and Split Samples.

- (a) State may conduct sampling, tests, audits, surveys, or investigations ("Tests") of the Property at any time to determine the existence, scope, or effects of Hazardous Substances on the Property, any adjoining property, any other property subject to use by Tenant in conjunction with its use of the Property, or any natural resources. If such Tests, along with any other information, demonstrates the existence, release, or threatened release of Hazardous Substances arising out of any action, inaction, or event described or referred to in Subsection 8.5, above, Tenant shall promptly reimburse State for all costs associated with such Tests.
- (b) State's ability to seek reimbursement for any Tests under this Subsection shall be conditioned upon State providing Tenant written notice of its intent to conduct any Tests at least thirty (30) calendar days prior to undertaking such Tests, unless such Tests are performed in response to an emergency situation in which case State shall only be required to give such notice as is reasonably practical.
- (c) Tenant shall be entitled to obtain split samples of any Test samples obtained by State, but only if Tenant provides State with written notice requesting such samples within twenty (20) calendar days of the date Tenant is deemed to have received notice of State's intent to conduct any non-emergency Tests. The additional cost, if any, of split samples shall be borne solely by Tenant. Any additional costs State incurs by virtue of Tenant's split sampling shall be reimbursed to State within thirty (30) calendar days after a bill with documentation for such costs is sent to Tenant.

Within thirty (30) calendar days of a written request (unless otherwise required pursuant to Subsection 8.4(b), above), either party to this Lease shall provide the other party with validated final data, quality assurance/quality control information, and chain of custody information, associated with any Tests of the Property performed by or on behalf of State or Tenant. There is no obligation to provide any analytical summaries or expert opinion work product.

8.8 Reservation of Rights. The parties have agreed to allocate certain environmental risks, liabilities, and responsibilities by the terms of Section 8. With respect to those environmental liabilities covered by the indemnification provisions of Subsection 8.5, that subsection shall exclusively govern the allocation of those liabilities. With respect to any environmental risks, liabilities, or responsibilities not covered by Subsection 8.5, the parties expressly reserve and do not waive or relinquish any rights, claims, immunities, causes of action, or defenses relating to the presence, release, or threatened release of Hazardous Substances in, on, under, or above the Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Property, that either party may have against the other under federal, state, or local laws, including but not limited to, CERCLA, MTCA, and the common law. No right, claim, immunity, or defense either party may have against third parties is affected by this Lease and the parties expressly reserve all such rights, claims, immunities, and defenses. The allocations of risks, liabilities, and responsibilities set forth above do not release either party from, or affect either party's liability for, claims or actions by federal, state, or local regulatory agencies concerning Hazardous Substances.

SECTION 9 ASSIGNMENT AND SUBLETTING

9.1 State Consent Required. Tenant shall not sell, convey, mortgage, assign, pledge, sublet, or otherwise transfer or encumber all or any part of Tenant's interest in this Lease or the Property without State's prior written consent, which shall not be unreasonably conditioned or withheld.

- (a) In determining whether to consent, State may consider, among other items, the proposed transferee's financial condition, business reputation and experience, the nature of the proposed transferee's business, the then-current value of the Property, and such other factors as may reasonably bear upon the suitability of the transferee as a tenant of the Property. Tenant shall submit information regarding any proposed transferee to State at least thirty (30) days prior to the date of the proposed transfer.
- (b) State reserves the right to condition its consent upon: (1) changes in the terms and conditions of this Lease, including the Annual Rent and other terms; and/or (2) the agreement of Tenant or transferee to conduct Tests for Hazardous Substances on the Property or on other property owned or occupied by Tenant or the transferee.
- (c) Each permitted transferee shall assume all obligations under this Lease, including the payment of rent. No assignment, sublet, or transfer shall release, discharge, or otherwise affect the liability of Tenant.

9.2 Event of Assignment. If Tenant is a corporation, a dissolution of the corporation or a transfer (by one or more transactions) of a majority of the voting stock of Tenant shall be deemed to be an assignment of this Lease. If Tenant is a partnership, a

dissolution of the partnership or a transfer (by one or more transactions) of the controlling interest in Tenant shall be deemed an assignment of this Lease.

9.3 Rent Payments Following Assignment. The acceptance by State of the payment of rent following an assignment or other transfer shall not constitute consent to any assignment or transfer.

9.4 Terms of Subleases. All subleases shall be submitted to State for approval and shall meet the following requirements:

- (a) The sublease shall be consistent with and subject to all the terms and conditions of this Lease;
- (b) The sublease shall confirm that if the terms of the sublease conflict with the terms of this Lease, this Lease shall control;
- (c) The term of the sublease (including any period of time covered by a renewal option) shall end before the Termination Date of the initial Term or any renewal term;
- (d) The sublease shall terminate if this Lease terminates, whether upon expiration of the Term, failure to exercise an option to renew, cancellation by State, surrender or for any other reason;
- (e) The subtenant shall receive and acknowledge receipt of a copy of this Lease;
- (f) The sublease shall prohibit the prepayment to Tenant by the subtenant of more than one month's rent;
- (g) The sublease shall identify the rental amount to be paid to Tenant by the subtenant;
- (h) The sublease shall confirm that there is no privity of contract between the subtenant and State;
- (i) The sublease shall require removal of the subtenant's improvements and trade fixtures upon termination of the sublease; and,
- (j) The subtenant's permitted use shall be within the Permitted Use authorized by this Lease.

9.5. Routine Subleasing of Moorage Slips. In the case of routine subleasing of moorage slips to recreational and commercial vessel owners for a term of one year or less, Tenant shall not be required to obtain State's written consent or approval pursuant to

Subsection 9.1 or Subsection 9.4. Tenant shall be obligated to ensure that these moorage agreements conform to the sublease requirements in Subsection 9.4.

SECTION 10 INDEMNITY, FINANCIAL SECURITY, INSURANCE

10.1 Indemnity. Tenant shall indemnify, defend, and hold harmless State, its employees, officers, and agents from any and all liability, damages (including bodily injury, personal injury and damages to land, aquatic life, and other natural resources), expenses, causes of action, suits, claims, costs, fees (including attorneys' fees), penalties, or judgments, of any nature whatsoever, arising out of the use, occupation, or control of the Property by Tenant, its subtenants, invitees, agents, employees, licensees, or permittees, except as may arise solely out of the willful or negligent act of State or State's elected officials, employees, or agents. To the extent that RCW 4.24.115 applies, Tenant shall not be required to indemnify, defend, and hold State harmless from State's sole or concurrent negligence. Tenant's liability to State for hazardous substances, and its obligation to indemnify, defend, and hold the State harmless for hazardous substances, shall be governed exclusively by Section 8.

10.2 Financial Security.

- (a) At its own expense, Tenant shall procure and maintain a corporate surety bond or provide other financial security satisfactory to State (the "Bond") in an amount equal to Thirty Thousand Dollars (\$30,000), which shall secure Tenant's full performance of its obligations under this Lease, with the exception of the obligations under Section 8 (Environmental Liability/Risk Allocation) above. The Bond shall be in a form and issued by a surety company acceptable to State. State may require an adjustment in the amount of the Bond:

- (1) At the same time as revaluation of the Annual Rent;
- (2) As a condition of approval of assignment or sublease of this Lease;
- (3) Upon a material change in the condition of any improvements; or,
- (4) Upon a change in the Permitted Use.

A new or modified Bond shall be delivered to State within thirty (30) days after adjustment of the amount of the Bond has been required by State.

- (b) Upon any default by Tenant in its obligations under this Lease, State may collect on the Bond to offset the liability of Tenant to State. Collection on the Bond shall not relieve Tenant of liability, shall not limit any of State's other remedies, and shall not reinstate or cure the default or prevent termination of the Lease because of the default.

10.3 Insurance. At its own expense, Tenant shall procure and maintain during the Term of this Lease, the insurance coverages and limits described in Subsections 10.3(a) and (b) below. This insurance shall be issued by an insurance company or companies admitted and licensed by the Insurance Commissioner to do business in the State of Washington. Insurers must have a rating of B+ or better by "Best's Insurance Reports," or a comparable rating by another rating company acceptable to State. If non-admitted or non-rated carriers are used, the policies must comply with Chapter 48.15 RCW.

(a) Types of Required Insurance.

- (1) Commercial General Liability Insurance. Tenant shall procure and maintain Commercial General Liability insurance and, if applicable, Marina Operators Legal Liability insurance covering claims for bodily injury, personal injury, or property damage arising on the Property and/or arising out of Tenant's operations. If necessary, commercial umbrella insurance covering claims for these risks shall be procured and maintained. Insurance must include liability coverage with limits not less than those specified below:

Description	
Each Occurrence	\$1,000,000
General Aggregate Limit	\$2,000,000

State may impose changes in the limits of liability:

- (i) As a condition of approval of assignment or sublease of this Lease;
- (ii) Upon any breach of Section 8, above;
- (iii) Upon a material change in the condition of the Property or any improvements; or,
- (iv) Upon a change in the Permitted Use.

New or modified insurance coverage shall be in place within thirty (30) days after changes in the limits of liability are required by State.

- (2) Property Insurance. Tenant shall procure and maintain property insurance covering all real property located on or constituting a part of the Property in an amount equal to the replacement value of all improvements on the Property. Such insurance may have commercially reasonable deductibles.

- (3) Worker's Compensation/Employer's Liability Insurance. Tenant shall procure and maintain:
- (i) State of Washington Worker's Compensation coverage, as applicable, with respect to any work by Tenant's employees on or about the Property and on any improvements;

Employers Liability or "Stop Gap" insurance coverage with limits not less than those specified below. Insurance must include bodily injury coverage with limits not less than those specified below:

<u>By Accident</u>	<u>Each Employee By Disease</u>	<u>Policy Limit By Disease</u>
\$1,000,000	\$1,000,000	\$1,000,000

Longshore and Harbor Worker's Act and Jones Act coverage, as applicable, with respect to any work by Tenant's employees on or about the Property and on any improvements.

- (4) Builder's Risk Insurance. As applicable, Tenant shall procure and maintain builder's risk insurance in an amount reasonably satisfactory to State during construction, replacement, or material alteration of the Property or improvements on the Property. Coverage shall be in place until such work is completed and evidence of completion is provided to State.
- (5) Business Auto Policy Insurance. As applicable, Tenant shall procure and maintain a business auto policy. The insurance must include liability coverage with limits not less than those specified below:

<u>Description</u>	<u>Each Accident</u>
Bodily Injury and Property Damage	\$1,000,000

- (b) Terms of Insurance. The policies required under Subsection 10.3 shall name the State of Washington, Department of Natural Resources as an additional insured (except for State of Washington Worker's Compensation coverage, and Federal Jones' Act and Longshore and Harbor Worker's Act coverages). Furthermore, all policies of insurance described in Subsection 10.3 shall meet the following requirements:
- (1) Policies shall be written as primary policies not contributing with and not in excess of coverage that State may carry;
- (2) Policies shall expressly provide that such insurance may not be canceled or nonrenewed with respect to State except upon

forty-five (45) days prior written notice from the insurance company to State;

- (3) To the extent of State's insurable interest, property coverage shall expressly provide that all proceeds shall be paid jointly to State and Tenant;
- (4) All liability policies must provide coverage on an occurrence basis; and
- (5) Liability policies shall not include exclusions for cross liability.

Proof of Insurance. Tenant shall furnish evidence of insurance in the form of a Certificate of Insurance satisfactory to the State accompanied by a checklist of coverages provided by State, executed by a duly authorized representative of each insurer showing compliance with the insurance requirements described in section 10, and, if requested, copies of policies to State. The Certificate of Insurance shall reference the State of Washington, Department of Natural Resources and the lease number. Receipt of such certificates or policies by State does not constitute approval by State of the terms of such policies. Tenant acknowledges that the coverage requirements set forth herein are the minimum limits of insurance the Tenant must purchase to enter into this agreement. These limits may not be sufficient to cover all liability losses and related claim settlement expenses. Purchase of these limits of coverage does not relieve the Tenant from liability for losses and settlement expenses greater than these amounts.

10.4 State's Acquisition of Insurance. If Tenant fails to procure and maintain the insurance described above within fifteen (15) days after Tenant receives a notice to comply from State, State shall have the right to procure and maintain comparable substitute insurance and to pay the premiums. Tenant shall pay to State upon demand the full amount paid by State, together with interest at the rate provided in Subsection 6.2 from the date of State's notice of the expenditure until Tenant's repayment.

SECTION 11 MAINTENANCE AND REPAIR

11.1 State's Repairs. State shall not be required to make any alterations, maintenance, replacements, or repairs in, on, or about the Property, or any part thereof, during the Term.

11.2 Tenant's Repairs, Alteration, Maintenance and Replacement.

- (a) Tenant shall, at its sole cost and expense, keep and maintain the Property and all improvements (regardless of ownership) in good order and repair, in a clean, attractive, and safe condition.
- (b) Tenant shall, at its sole cost and expense, make any and all additions, repairs, alterations, maintenance, replacements, or changes to the Property

or to any improvements on the Property which may be required by any public authority.

- (c) All additions, repairs, alterations, replacements or changes to the Property and to any improvements on the Property shall be made in accordance with, and ownership shall be governed by, Section 7, above.

SECTION 12 DAMAGE OR DESTRUCTION

- (a) In the event of any damage to or destruction of the Property or any improvements, Tenant shall promptly give written notice to State. Unless otherwise agreed in writing, Tenant shall promptly reconstruct, repair, or replace the Property and any improvements as nearly as possible to its condition immediately prior to the damage or destruction.
- (b) Tenant's duty to reconstruct, repair, or replace any damage or destruction of the Property or any improvements on the Property shall not be conditioned upon the availability of any insurance proceeds to Tenant from which the cost of repairs may be paid.
- (c) Unless this Lease is terminated by mutual agreement, there shall be no abatement or reduction in rent during such reconstruction, repair, and replacement.
- (d) Any insurance proceeds payable by reason of damage or destruction shall be first used to restore the real property covered by this Lease, then to pay the cost of the reconstruction, then to pay the State any sums in arrears, and then to Tenant.
- (e) In the event Tenant is in default under the terms of this Lease at the time damage or destruction occurs, State may elect to terminate the Lease and State shall then have the right to retain any and all insurance proceeds payable as a result of the damage or destruction.

SECTION 13 CONDEMNATION

13.1 Definitions.

- (a) Taking. The term "taking," as used in this Lease, means the taking of all or any portion of the Property and any improvements thereon under the power of eminent domain, either by judgment or settlement in lieu of judgment. Taking also means the taking of all or a portion of the Property and any improvements thereon to the extent that the Permitted Use is prevented or, in the judgment of State, the Property is rendered impractical for the Permitted Use. A total taking occurs when the entire Property is

taken. A partial taking occurs when the taking does not constitute a total taking as defined above.

- (b) **Voluntary Conveyance.** The terms "total taking" and "partial taking" shall include a voluntary conveyance, in lieu of formal court proceedings, to any agency, authority, public utility, person, or corporate entity empowered to condemn property.
- (c) **Date of Taking.** The term "date of taking" shall mean the date upon which title to the Property or a portion of the Property passes to and vests in the condemnor or the effective date of any order for possession if issued prior to the date title vests in the condemnor.

13.2 Effect of Taking. If during the Term there shall be a total taking, the leasehold estate of Tenant in the Property shall terminate as of the date of taking. If this Lease is terminated, in whole or in part, all rentals and other charges payable by Tenant to State and attributable to the Property taken shall be paid by Tenant up to the date of taking. If Tenant has pre-paid rent, Tenant will be entitled to a refund of the pro rata share of the pre-paid rent attributable to the period after the date of taking. In the event of a partial taking, there shall be a partial abatement of rent from the date of taking in a percentage equal to the percentage of Property taken.

13.3 Allocation of Award. State and Tenant agree that in the event of any condemnation, the award shall be allocated between State and Tenant based upon the ratio of the fair market value of Tenant's leasehold estate and Tenant-Owned Improvements on the Property and State's interest (a) in the Property, (b) in the reversionary interest in Tenant-Owned Improvements, and (c) in State-Owned Improvements. In the event of a partial taking, this ratio will be computed on the basis of the portion of Property or improvements taken. If Tenant and State are unable to agree on the allocation, it shall be submitted to binding arbitration in accordance with the rules of the American Arbitration Association.

SECTION 14 DEFAULT AND REMEDIES

- (a) Tenant shall be in default of this Lease on the occurrence of any of the following:
 - (1) Failure to pay Annual Rent or other expenses when due;
 - (2) Failure to comply with any law, regulation, policy, or order of any lawful governmental authority;
 - (3) Failure to comply with any other provision of this Lease;

- (4) Two or more defaults over a period of time, or a single serious default, that demonstrates a reasonable likelihood of future defaults in the absence of corrective action by Tenant; or
 - (5) Proceedings are commenced by or against Tenant under any bankruptcy act or for the appointment of a trustee or receiver of Tenants' property.
- (b) A default shall become an event of default ("Event of Default") if Tenant fails to cure the default within the applicable cure period after State provides Tenant with written notice of default, which specifies the nature of the default. For failure to pay rent or other monetary defaults, the cure period shall be ten (10) days. For other defaults, the cure period shall be thirty (30) days.
- (c) Upon an Event of Default, State may terminate this Lease and remove Tenant by summary proceedings or otherwise. State may also, without terminating this Lease, relet the Property on any terms and conditions as State in its sole discretion may decide are appropriate. If State elects to relet, rent received by it shall be applied: (1) to the payment of any indebtedness other than rent due from Tenant to State; (2) to the payment of any cost of such reletting; (3) to the payment of the cost of any alterations and repairs to the Property; and, (4) to the payment of rent and leasehold excise tax due and unpaid under this Lease. Any balance shall be held by State and applied to Tenant's future rent as it becomes due. Tenant shall be responsible for any deficiency created by the reletting during any month and shall pay the deficiency monthly. State's reentry or repossession of the Property under this subsection shall not be construed as an election to terminate this Lease or cause a forfeiture of rents or other charges to be paid during the balance of the Term, unless State gives a written notice of termination to Tenant or termination is decreed by legal proceedings. State may at any time after reletting elect to terminate this Lease for the previous Event of Default.

SECTION 15 ENTRY BY STATE

State shall have the right to enter the Property at any reasonable hour to inspect for compliance with the terms of this Lease.

SECTION 16 DISCLAIMER OF QUIET ENJOYMENT

As indicated in Section 1.1, this Lease is subject to all valid recorded interests of third parties, as well as rights of the public under the Public Trust Doctrine or federal navigation servitude, and treaty rights of Indian Tribes. State believes that its grant of the Lease is consistent with the Public Trust Doctrine and that none of the identified interests of third parties will materially and adversely affect Tenant's right of possession and use

of the Property as set forth herein, but makes no guaranty or warranty to that effect. Tenant and State expressly agree that Tenant shall be responsible for determining the extent of its right to possession and for defending its leasehold interest. Consequently, State expressly disclaims and Tenant expressly releases State from any claim for breach of any implied covenant of quiet enjoyment with respect to the possession of the Property. This disclaimer includes, but is not limited to, interference arising from or in connection with access or other use rights of adjacent property owners or the public over the water surface or in or under the water column, including rights under the Public Trust Doctrine; rights held by Indian Tribes; and the general power and authority of State and the United States with respect to aquatic lands, navigable waters, bedlands, tidelands, and shorelands. In the event Tenant is evicted from the Property by reason of successful assertion of any of these rights, this Lease shall terminate as of the date of the eviction. In the event of a partial eviction, Tenant's rent obligations shall abate as of the date of the partial eviction, in direct proportion to the extent of the eviction, but in all other respects, this Lease shall remain in full force and effect.

SECTION 17 NOTICE

Any notices required or permitted under this Lease may be personally delivered, delivered by facsimile machine, or mailed by certified mail, return receipt requested, to the following addresses or to such other places as the parties may direct in writing from time to time:

State: DEPARTMENT OF NATURAL RESOURCES
Northwest Region
919 North Township Street
Sedro-Woolley, WA 98284

Tenant: EQUILON ENTERPRISES, L.L.C., d.b.a, SHELL OIL PRODUCTS US
PO Box 622
600 South Texas Road
Anacortes, WA 98221-0622

A notice shall be deemed given and delivered upon personal delivery, upon receipt of a confirmation report if delivered by facsimile machine, or three (3) days after being mailed as set forth above, whichever is applicable.

SECTION 18 MISCELLANEOUS

18.1 Authority. Tenant and the person or persons executing this Lease on behalf of Tenant represent that Tenant is qualified to do business in the State of Washington, that Tenant has full right and authority to enter into this Lease, and that each and every person signing on behalf of Tenant is authorized to do so. Upon State's request, Tenant will provide evidence satisfactory to State confirming these representations. This Lease is entered into by State pursuant to the authority granted it in Chapters 79.90 to 79.96 RCW and the Constitution of the State of Washington.

18.2 Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the parties, their successors and assigns.

18.3 Headings. The headings used in this Lease are for convenience only and in no way define, limit, or extend the scope of this Lease or the intent of any provision.

18.4 Entire Agreement. This Lease, including the exhibits and addenda, if any, contains the entire agreement of the parties. All prior and contemporaneous agreements, promises, representations, and statements relating to this transaction or to the Property, if any, are merged into this Lease.

18.5 Waiver. The waiver by State of any breach or default of any term, covenant, or condition of this Lease shall not be deemed to be a waiver of such term, covenant, or condition; of any subsequent breach or default of the same; or of any other term, covenant, or condition of this Lease. State's acceptance of a rental payment shall not be construed to be a waiver of any preceding or existing breach other than the failure to pay the particular rental payment that was accepted.

18.6 Cumulative Remedies. The rights and remedies of State under this Lease are cumulative and in addition to all other rights and remedies afforded to State by law or equity or otherwise.

18.7 Time is of the Essence. TIME IS OF THE ESSENCE as to each and every provision of this Lease.

18.8 Language. The word "Tenant" as used in this Lease shall be applicable to one or more persons, as the case may be. The singular shall include the plural, and the neuter shall include the masculine and feminine. If there is more than one Tenant, their obligations shall be joint and several. The word "persons," whenever used, shall include individuals, firms, associations, and corporations.

18.9 Invalidity. If any provision of this Lease shall prove to be invalid, void, or illegal, it shall in no way affect, impair, or invalidate any other provision of this Lease.

18.10 Applicable Law and Venue. This Lease shall be interpreted and construed in accordance with the laws of the State of Washington. Any reference to a statute shall mean that statute as presently enacted or hereafter amended or superseded. Venue for any action arising out of or in connection with this Lease shall be in the Superior Court for Thurston County, Washington.

18.11 Recordation. Tenant shall record this Lease or a memorandum documenting the existence of this Lease in the county in which the Property is located, at Tenant's sole expense. The memorandum shall, at a minimum, contain the Property description, the names of the parties to the Lease, the State's lease number, and the duration of the Lease. Tenant shall provide State with recording information, including the date of recordation

and file number. Tenant shall have thirty (30) days from the date of delivery of the final executed agreement to comply with the requirements of this subsection. If Tenant fails to record this Lease, State may record it and Tenant shall pay the costs of recording upon State's demand.

18.12 Modification. Any modification of this Lease must be in writing and signed by the parties. State shall not be bound by any oral representations or statements.

THIS AGREEMENT requires the signature of all parties and is executed as of the date of the last signature below.

EQUILON ENTERPRISES, L.L.C., D.B.A.,
SHELL OIL PRODUCTS US,
A limited liability company

Dated: August 24, 2021

By: Thomas N. Smith
THOMAS N. SMITH

Title: Refinery Manager

Address: PO Box 622
600 South Texas Road
Anacortes, WA 98221-0622

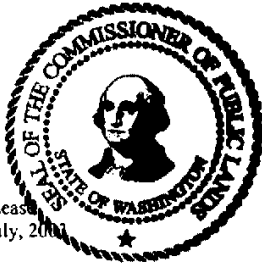
STATE OF WASHINGTON
DEPARTMENT OF NATURAL
RESOURCES

Dated: 9/21/4, 20

By: Doug Sutherland
DOUG SUTHERLAND

Title: Commissioner of Public Lands

Address: 1111 Washington St SE
Olympia, WA 98504-7027



Standard Commercial Lease
Approved as to Form July, 2001
by Mike Grossmann
Assistant Attorney General
State of Washington

CORPORATE ACKNOWLEDGMENT

STATE OF Washington)
) ss
COUNTY OF Skagit)

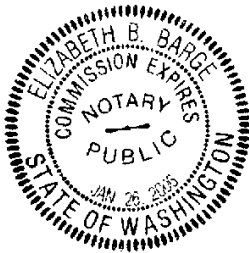
On this 24th day of August, 2004, before me personally appeared THOMAS N. SMITH to me known to be the Refinery Manager of the company that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

DATED: Aug 24, 2004

Elizabeth Barge
Elizabeth Barge
(Type/Print Name)

Notary Public in and for the State of Washington
residing at: Island County
My Commission Expires: Jan 26, 2006



SHELL OIL PRODUCTS US
Exhibit B
DNR Lease No. 20-A12561

Introduction

The Shell Puget Sound Refinery (PSR) was originally constructed in 1958. The facility is a fuels refinery that processes approximately 140,000 barrels per day of crude oil into gasoline, diesel, jet fuel and other related hydrocarbon products. As part of our normal operation, the facility has substantial water-dependent activities associated with the receipt of raw materials, shipping of products, vessel fueling and permitted Clean Water Act (CWA) discharges. The dock under consideration for this lease was originally built in 1958 when the entire refinery was constructed. This exhibit and other submittals are in support of the re-lease of the aquatic lands beneath our wharf and portions of our access roadway and pipeline support structures.

Dock Operation

In 2003, approximately 300 vessels visited the Puget Sound Refinery Dock facility. These ships included a combination of mostly crude oil and petroleum product vessels. Scheduling of the arrival and departure of ships is completed by the refinery Business Planning and Operations Group and is designed to meet raw material and product needs in our market area. Docking procedures are outlined in the facility Marine Transfer Pipeline Operations Manual. The manual is regularly reviewed and approved by the United States Coast Guard (USCG) and the Department of Ecology.

In compliance with the National Invasive Species Act (NISA) of 1996, the United States Coast Guard has established both regulations and guidelines to control the invasion of aquatic nuisance species (ANS). 68 CFR 44691 outlines newly proposed regulations to address ANS through a comprehensive national ballast water management program. 68CFR 44691 includes requirements that all vessels equipped with ballast water tanks entering U.S. waters after operating beyond the Exclusive Economic Zone (EEZ) employ at least one of the following ballast management practices:

- Prior to discharging ballast water in U.S. waters, perform complete ballast water exchange in an area no less than 200 nautical miles from any shore.
- Retain ballast water onboard the vessel.
- Use an alternative environmentally sound method of ballast water management that has been approved by the Coast Guard
- Discharge ballast water to an approved reception facility.

As Shell does not generally own, or operate, the vessels that call at our wharf facility, we do not have direct control over the ships ballast water exchange activities. As the facility is concerned with the possible introduction of ANS, we have had a number of meetings with ship owners and operators to express Shell's interest in preventing the introduction of invasive species.

In compliance with USCG 33 CFR Parts 154 and 156/WAC 173-180B, the facility maintains and regularly updates its Marine Transfer Pipeline Operations Manual (MTPOM). The purpose of the MTPOM is to describe personnel responsibilities, operating procedures, facility descriptions, and related data concerning the Shell Oil Products US Puget Sound Refinery Dock and Transfer Operations. The manual documents how the PSR meets or exceeds the operating rules and equipment requirements prescribed by 33 CFR Parts 154 and 156 and State of Washington (WAC 173-180B-070) in conducting cargo transfer and transfer pipeline operations.

All governmental regulations and Company standards and procedures are strictly enforced throughout docking and loading/unloading operations. In case of an emergency or accidental discharge of oil, which reaches open water, the appropriate procedures noted in the Shell Oil Products US Puget Sound Refinery Facility Response plan shall be followed.

The U.S. Coast Guard, as part of efforts to improve homeland security, has established an exclusion zone for unauthorized personnel and vessels around PSR's water dependent facilities. The Coast Guard required exclusion zone (currently 300') can accommodate other users of the aquatic lands within the exclusion area, as long as authorized users receive explicit Coast Guard and Department of Natural Resource approval and provide such approvals to the facility in writing prior to any use.

The Marine Transfer Pipeline Operations Manual is reviewed and approved by the United States Coast Guard. The USGC makes periodic inspections of the wharf facility to confirm compliance with applicable regulations. The Marine Transfer Pipeline Operations Manual is maintained at the facility and is available for viewing at the request of appropriate agency personnel.

Oil Handling Personnel Training

In compliance with WAC 173-180C (7), Puget Sound Refinery (PSR) provides training for employees and supervisors having exposure to dock or pipeline operation. This training consists of several modules as listed below:

- OHP 501 - Overview of Oil Handling, Transfer, Storage, Monitoring and Leak Detection
- OHP 503 - Local Environmental Sensitivity and Oil Spill Impacts
- OHP 505 - Notification Procedures for Emergency Spill Prevention Actions for Operations
- OHP 506 - Major components of the PSR Marine Transfer Pipeline Facility Operations Manual
- OHP 508 - Major Components of the PSR Spill Prevention Plan (SPCC)
- OHP 509 - Major components of the PSR Oil Spill Response Plan (OSRP)

- OHP 511 - Emergency spill prevention and safe shutdown conditions
- OHP 600/610/620 - Equipment problem assessment and preventative maintenance

The training is required to be completed before any new maintenance employees can begin work with the dock or pipeline areas of the refinery.

Oil Spill Prevention Plan

In compliance with Department of Ecology spill prevention rules (Chapter 173-180 A - D) and other applicable regulations, PSR maintains and regularly updates the facility Oil Spill Prevention Plan. This plan is regularly reviewed and approved by the Department of Ecology. The Oil Spill Prevention Plan describes the procedures and technologies in place at Puget Sound Refinery to prevent and minimize the occurrence and consequences of oil spills. The Puget Sound refinery is designed, maintained, and operated to minimize the potential for the occurrence of oil spills. The purpose of the plan is to:

- Detail information of all of the key components of a spill prevention program.
- Provide a reference document for plant personnel involved in spill prevention operations.
- Describe spill prevention procedures and technologies implemented at PSR.
- Identify; through risk analysis, the equipment or components of the oil transfer and storage system which may have a high potential for oil spills.
- Implement "Best Achievable Protection Measures" for those areas identified as having a high risk.
- Increase overall awareness of the importance of spill prevention to plant personnel.

Spill Prevention, Control, and Countermeasure Plan

The Spill Prevention, Control, and Countermeasure Plan (SPCC) for Puget Sound Refinery has been developed in accordance with the regulatory requirements of 40 CFR Part 112 (EPA). This plan describes the facility and sources of potential hydrocarbon releases and measures in place to contain and or mitigate the likelihood of such a release. The plan includes a detailed description of spill prevention countermeasures, notification requirements and response procedures at Puget Sound Refinery.

Oil Spill Response Plan

In compliance with the requirements of Title 33, Code of Federal Regulations (DFR), Part 154.1035, Puget Sound Plant Maintains and regularly update the facility "Oil Spill Response Plan".

The Oil Spill Response Plan describes the equipment, personnel, agency contact, and actions to be taken in the event of a significant oil spill. The plan is reviewed and approved by the United States Coast Guard. As part of the activities related to the Oil Spill Response Plan, the facility conducts annual drills to train personnel, test equipment, and assess our readiness for an actual oil spill event. Oil spill drills are typically attended by Federal, State and Local agency representative who provide feedback with regard to oil spill response preparedness.

Emergency Response Guide and Emergency Action Plan

The purpose of the Emergency Response Guide and Emergency Action Plans is to provide detailed guidelines to facilitate effective response actions to emergency situations. The guides provide preparedness and planning information to assist responders. The plans are based on the United States Coast Guard Incident Command System structure.

NPDES (Wastewater Discharge) Permit

In compliance with the requirements of the Federal Clean Water Act, the Washington State Dept. of Ecology issued NPDES permit number WA-000294-1 to the Shell Puget Sound Refinery in February 2001. The facility includes a permitted wastewater treatment facility and outfall. In 1997, PSR completed an \$10.8 million upgrade of the wastewater treatment facilities that included a new biological section and clarifiers. Since the installation of the new equipment, PSR has not had any violations of our permit requirements that were the result of activities controllable by the facility. PSR's NPDES permit requires numerous studies and limits designed to be fully protective of human health and the environment including:

- Monthly discharge monitoring reports
- Toxicity Compliance Testing
- Sediment Sampling and Analysis
- Treatment Efficiency Study
- Effluent ReCharacterization for Human Health
- Pollution Prevention Plans
- Effluent Discharge Outfall Evaluation

Shell is required to be in compliance with any sediment sampling requirements and details that may be referenced in the varying NPDES permits, which are typically re-issued by the State Department of Ecology every five years.

In addition to the above mentioned NPDES permit requirements, a number of ecological studies have been completed that demonstrate the health of the local marine environment including:

- **Ecology Publication No. 79-338, November 1997, entitled "Survey for Petroleum and Other Chemical Contaminants in the Sediments of Fidalgo Bay".** The findings and conclusions of the study include the following:
 1. "Results of this survey show the chemical quality of the sediments in Fidalgo Bay to be generally good."
 2. "The survey did not clearly identify any chemical contamination that could be linked to adverse effects of herring."
- **Ecology Publication No. 00-03-008, May 2000, entitled "Results of a Screening Analysis for Metals and Organic Compounds in Shellfish from Padilla Bay and Vicinity."** (Includes Fidalgo Bay). The study concludes: "Results of this study show that shellfish in the Padilla/Fidalgo Bay area have a very low level of chemical contamination. In most instances, the concentrations detected appear to be at background level for Puget Sound."
- **National Toxics Rule 303d List** - State and Federal Officials are required to establish water quality standards that are protective of human health and the environment. Should a water body contain levels of pollution that exceed these standards, the water body must be included on the National Toxics Rule 303d list. Water in Fidalgo Bay and Guemes Channel has been extensively tested and no chemical contamination has been found in excess of acceptable water quality standards. Thus, Fidalgo Bay and Guemes Channel are *NOT* listed on the National Toxics Rules 303d list.

In summary, the department of Ecology has strict discharge monitoring requirements and has completed substantial ecological and environmental studies in Fidalgo Bay over a number of years. According to the Washington Dept. of Fisheries, the local herring population in Fidalgo Bay more than doubled during the 10-year window between 1983 and 1992. In conclusion, various ecological studies and environmental indicators show the overall health in the marine environmental in Fidalgo Bay to be generally good. At this time, none of the extensive studies or data shows an adverse connection between the activities at the facility wharf and the health of the local marine environment.

The State of Washington



Department of Natural Resources
Hilary Franz Commissioner of Public Lands

Certificate

I, Boyd Barber certify that I have compared the attached copy, or specific part thereof, listed below, with the records in our custody, and that the same, or each of the same, is a true and correct copy of the Record in the Official Custody of the Commissioner of Public Lands of the State of Washington.

FROM THE RECORDS OF:

Department of Natural Resources

Lease No. 20-A12561

(31 pages)



In Testimony Whereof, I have hereunto set my hand and affixed hereto the Seal of the Office of the Commissioner of Public Lands of the State of Washington.

Boyd Barber

September 20, 2021

Ronald Munro, Assistant Secretary, DNR