

From: [Council](#)
To: [Becky Boxx](#); [Matt Aamot](#)
Subject: FW: WSPA Comments Unrefined Fossil Fuels and Proposed Comprehensive Plan Amendments
Date: Tuesday, July 24, 2018 9:06:53 AM
Attachments: [image002.png](#)
[7 24 18 WSPA Ltr Whatcom County Council Comments.pdf](#)

From: Holli Johnson [mailto:hjohnson@wspa.org]
Sent: Tuesday, July 24, 2018 9:05 AM
To: Barry Buchanan; Tyler Byrd; Timothy Ballew; Todd Donovan; Barbara Brenner; Rud Browne; Satpal Sidhu
Cc: Council; Jessica Spiegel
Subject: WSPA Comments Unrefined Fossil Fuels and Proposed Comprehensive Plan Amendments

Hello Councilmembers,

Enclosed is WSPA's comments related the Ongoing Whatcom County Unrefined Fossil Fuels Moratorium and Proposed Comprehensive Plan Amendments. We hope you review these comments prior to further action.

If you have any questions, please contact us.

Thank you!

[Holli Johnson](#)
SENIOR COORDINATOR, NW REGION



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Western States Petroleum Association
Credible Solutions • Responsive Service • Since 1907

Jessica Spiegel
NW Region

July 24, 2018

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Re: WSPA Comments on the Ongoing Whatcom County Unrefined Fossil Fuels Moratorium and Proposed Comprehensive Plan Amendments

Honorable Council Members:

The Western States Petroleum Association (WSPA) appreciates the opportunity to provide comments on the Unrefined Fossil Fuel Moratorium and Proposed Comprehensive Plan Amendments. WSPA is a non-profit trade association representing companies that explore for, produce, refine, transport, and market petroleum and petroleum products in five western states, including Washington. WSPA members have operated refineries along Cherry Point in Whatcom County for decades. This area provides key energy and emergency infrastructure as recognized by various city, state, and federal documents and is a regional hub for energy production and distribution. WSPA's concerns with the present action are outlined below.

“Temporary” Moratorium

WSPA opposes the Whatcom County Council's ongoing extension of the Unrefined Fossil Fuels Moratorium, the fifth such iteration of this “temporary” moratorium. This “temporary” moratorium has already been in place for two and a half years as of July 2018.

To the extent that the County Council intends to regulate land use pertaining to unrefined fossil fuels, the County Council's use of this “temporary” moratorium is an improper shortcut; rather, the County Council is required to appropriately observe all the procedural requirements that apply to amending the existing Whatcom County zoning regulations. None of the five extensions of the moratorium have complied with the procedural requirements that are required, as a matter of law, in order to properly amend these regulations. Accordingly, each extension of the “temporary” moratorium is a County Council action that violates both the letter and the spirit of Washington's robust planning laws.

Proposed Comprehensive Plan Amendments

WSPA also has serious concerns with the proposed changes to the Whatcom County Comprehensive Plan (Comprehensive Plan). The current proposal makes dramatic, unworkable

changes to the Comprehensive Plan and creates grave concerns regarding the ongoing economic viability of the two refineries and other business located in the heavy industrial area.

In addition, in many cases, the County Council's proposed Comprehensive Plan amendments are an obvious contradiction of the County Council's stated support of the Cherry Point refineries. In certain circumstances, the Senior Planner has recommended maintaining the status quo with respect to the existing regulations, and WSPA supports these recommendations. **In particular, WSPA has concerns with the following proposed changes:**

- **Other Federal/State Permits:** WSPA agrees with the Staff's recommendation that the present code provisions be maintained. The code presently allows applicants to pursue simultaneously permits for a project from local, state, and federal agencies. This existing process recognizes that the same application materials are often relevant to more than one permit. Existing code also gives the County the ability to deny a County permit in projects involving the preparation of an EIS where the local, state, or federal agencies have denied a permit.
- **Hazardous Substances:** The County Council has asked that the Plan be amended to include, in Policy 2CC-16, a policy that would "seek to limit the negative impact on public safety, transportation, the economy and the environment from new or expanded... hazardous substance exports from the Cherry Point UGA above levels in existence as of March 1, 2017." *See* County Council Agenda Attachments at 193. The County Council has asked that the Plan utilize the definition of "Hazardous substances," included at WAC 173-303-090 and WAC 173-303-100, rules developed under Washington's Hazardous Waste Management Act, RCW 70.105, *et seq.*

This proposed addition is inappropriate and unworkable. The Hazardous Waste Management Act is Washington's version of the federal Resource Conservation and Recovery Act (also referred to as "RCRA"), a federal law that comprehensively regulates the generation, treatment, and disposal of hazardous substances. The Hazardous Waste Management Act and RCRA are highly specialized environmental laws that are designed to regulate the management of hazardous waste; they are not designed to function as local planning tools. Incorporating the term "hazardous substance," as currently defined by RCW 70.105.100(10) as part of the Comprehensive Plan risks running afoul of and being preempted by state and federal laws and regulations.

Moreover, the definition of "hazardous substances" from the Hazardous Waste Management Act rules that the County Council has asked to be included in the Comprehensive Plan are highly technical. Determining whether a given substance qualifies as a "hazardous substance" is well outside of the substantive expertise of most local planners who deal with local land use issues. As but one example, to determine whether a solid qualifies as a hazardous substance, Whatcom County staff will have to investigate its ignitability (for instance, if a liquid, does the substance have a flash point less than 60 degrees C using the testing methods, including those specified in the ASTM Standard D93-06), its corrosivity (for instance, if aqueous, does it have a pH less than or equal to 2 or greater than 12.5

utilizing specific testing methods), its reactivity, and/or its toxicity (as determined by identified EPA-approved testing methods).

- **Use of “New or Expanded”:** The application of new conditional use permit requirements to a variety of “new or expanded” facilities belies the County Council’s stated intention not to harm the operation of existing businesses at Cherry Point. It is critical to their economic viability that those existing businesses be permitted to expand their operations. Applying more onerous, expensive, and discretionary permitting requirements to existing operations will have a chilling effect on future expansion. Moreover, as presently proposed, “new or expanded” will be difficult and cumbersome to apply. For instance, will a new parking lot constitute an “expansion” that would now require a conditional use permit?
- **Pipelines – UTC:** The proposed new conditional use permits purport to regulate natural gas and other facilities that are presently and comprehensively regulated under existing Washington law (for instance by the Gas and Hazardous Liquid Pipeline laws at RCW 81.88, which are environmental and public safety measures already applicable to the transportation of hazardous liquids and gas by pipeline in Washington) and by Washington’s Utilities and Transportation Commission, including natural gas facilities. Including these requirements in the Whatcom County Code risks running afoul of and being preempted by existing state and federal law.

Under the proposed language, Cherry Point refineries cannot be assured that permitting applications for refinery maintenance and improvements will be processed fairly and objectively, thus jeopardizing their approval and ultimately the viability of the business. The proposal threatens long-term sustainable employment in the region and distinctly disadvantages the two Whatcom County refineries by limiting their future growth and expansion, while the three other refineries in the region would not be similarly restricted.

The interim moratorium and proposed comprehensive plan amendments may result in reduced energy options available in other jurisdictions in Washington and other nearby states, without appropriately coordinating with those jurisdictions. The policy decisions that the County is trying to force through affect the region and the state, and seem to exclude impacted parties in smaller cities and rural areas of the state.

We propose that all references to “hazardous substance” in the Comprehensive Plan and references to “new and expanded” in the proposed new code provisions be eliminated. These restrictions are inconsistent with a heavy industrial zoning area. Such a heavy industrial area is supposed to provide a location for such heavy industrial uses to operate without burdensome regulations.

WSPA respectfully urges Whatcom County to restore to its local stakeholders the right to apply for and have processed any land use and development permit applications that are authorized by the existing Whatcom County Code. To do so, the current moratorium should be allowed to expire without further renewal.

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Thank you for your consideration of WSPA's comments. We welcome any questions or comments you might have. Please contact me or the Senior Coordinator for the Northwest Region of WSPA, Holli Johnson at (360) 352-4506 or by email at hjohnson@wspa.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Jodie Muller". The signature is written in a cursive style with a large initial "J" and a stylized "M".

cc: Jodie Muller, WSPA