

DEPARTMENT OF JUSTICE**Notice of Lodging of Proposed Consent Decree Under the Clean Water Act and Oil Pollution Act**

On June 3, 2019, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Western District of Washington in the lawsuit entitled *United States, State of Washington through the Washington Department of Ecology, Suquamish Tribe, and Tulalip Tribes v. Port of Everett*, Civil Action No. 2:19-cv-00843.

The proposed Consent Decree resolves claims alleged by the U.S. Department of the Interior, the National Oceanic and Atmospheric Administration, the State of Washington, the Suquamish Tribe, and the Tulalip Tribes (“the Port Gardner Bay Trustees”) against the Defendant Port of Everett (“the Port”) for natural resource damages caused by discharges of hazardous substances and oil to the Port Gardner Bay Area in Everett, Washington. The settlement requires the Port to construct and maintain the Blue Heron Slough Restoration Project, which will restore 338 acres of intertidal estuarine and upland habitats in the lower Snohomish River estuary, and to resolve its liability by retiring conservation bank credits equivalent to approximately 35 acres of the Project. The Port will also pay a proportionate share of assessment costs incurred by the Port Gardner Bay Trustees, totaling \$703,496. The United States, on behalf of the U.S. Navy, will make a payment of \$789,840 to be used towards construction of the Project, and pay assessment costs totaling \$135,931. In exchange for the payment from the Navy and prior settlement payments from other parties, the Port will retire additional conservation bank credits equivalent to approximately 36 additional acres of the Project. The Port and the Navy will receive covenants not to sue under federal statutory law and state statutory or common law, for natural resource damages caused by discharges of hazardous substances and oil from their facilities (identified in Appendix B to the Decree) to the Port Gardner Bay Area.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States, State of Washington through the Washington Department of Ecology, Suquamish Tribe, and Tulalip Tribes v. Port of Everett*, D.J. Ref. No.

90–11–3–10859/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By email	<i>pubcomment-ees.enrd@usdoj.gov.</i>
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, D.C. 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for \$47.00 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without appendices, the cost is \$19.00.

Susan Akers,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

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DEPARTMENT OF JUSTICE**Notice of Lodging of Proposed Fifth Joint Modification to Consent Decree Under the Clean Air Act**

On May 29, 2019, the Department of Justice lodged a proposed Fifth Joint Modification To Consent Decree with the United States District Court for the Southern District of Ohio in the lawsuit entitled *United States, et al. v. American Electric Power Service Corp., et al.*, Civil Action Nos. 99–1182 (EAS) and 99–1250 (EAS).

Under the original Consent Decree, entered by the Court on December 10, 2007, American Electric Power Service Corp., et al. (AEP) agreed to substantially reduce sulfur dioxide (SO₂) and nitrogen oxides (NO_x) emissions from the AEP Eastern System that was then comprised of sixteen coal-fired power plants. As part of the original Consent Decree, AEP was required to install flue gas desulfurization (FGD) technology to reduce SO₂ on two electric generating units located at AEP’s Rockport, Indiana

power plant. The original Consent Decree required AEP to install FGD technology on Rockport Unit 1 by December 31, 2017 and on Rockport Unit 2 by December 31, 2019. The Consent Decree’s requirements for Rockport Unit 1 and Rockport Unit 2 were later modified by the Third Joint Modification to the Consent Decree that was entered by the Court on May 14, 2013. Under the Third Joint Modification to the Consent Decree, AEP was required to retrofit, refuel, or re-power one Rockport Unit by December 31, 2025 and the second Rockport Unit by December 31, 2028.

Under the proposed Fifth Joint Modification to Consent Decree, the deadline for AEP to retrofit, refuel, or re-power Rockport Unit 1 is extended until December 31, 2028 and the requirement to retrofit, refuel, or re-power Rockport Unit 2 is removed. In exchange, AEP agrees to do the following: (1) Install enhanced dry sorbent injection technology to reduce SO₂ emissions on Rockport Unit 1 by December 31, 2020 and Rockport Unit 2 by June 1, 2020; (2) comply with a 30-day rolling average emission rate of 0.15 pounds of SO₂ per million British thermal units of heat input at the Rockport Units for years 2021 and beyond; (3) reduce the AEP Eastern System-wide annual tonnage limitations for SO₂ for years 2021 and beyond; (4) reduce the Rockport Plant-wide annual tonnage limitations for SO₂ for years 2021 and beyond; (5) install selective catalytic reduction NO_x control technology on Rockport Unit 2 by June 1, 2020; (6) comply with a 30-day rolling average emission rate of 0.09 pounds of NO_x per million British thermal units of heat input at the Rockport Units for years 2021 and beyond; (7) reduce the AEP Eastern System-wide annual tonnage limitations for NO_x for years 2018 and beyond; (8) provide the State Co-Plaintiffs with an additional \$4 million in mitigation funding; (9) provide the Citizen Co-Plaintiffs with an additional \$3.5 million in mitigation funding; and (10) retire Rockport Unit 1 by December 31, 2028.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Fifth Joint Modification to Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, and should refer to *United States, et al. v. American Electric Power Services Corp.*, D. J. Ref. No. 90–5–2–1–06893. All comments must be submitted no later than thirty days after the publication date of this notice.