

From: [REDACTED]
Sent: Sunday, July 08, 2012 8:00 PM
To: Wessel, Ann (ECY)
Subject: formal comment on the proposed Dungeness Water Management Rule

Dr. Robert N. Crittenden
[REDACTED]

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July 8, 2012

Regarding: Formal Comment on the Proposed Dungeness Water Management Rule

Dear Ann,

Please consider this as a formal comment. Thank you.

During the question and answer session before the formal public hearing on this proposed rule, in Sequim, on June 28, 2012, I asked about the two parts of the 2008 groundwater flow model and whether they were proprietary or in the public domain. The answer I received from a representative of the Department of Ecology, if, I properly understood it, was that those two parts are a finite difference model that was written by the USGS and an interface that allows one to run the finite difference model. He said that the finite difference model is in the public domain but the interface is proprietary.

Apparently, the 2008 groundwater flow model requires the use of both of those components. That model is important, because it provided some of the studies upon which the proposed rule is based and it will, also, be used in its implementation. It is specifically referred to in the proposed rule at 173-518-070 3ai, 173-518-080 5c, 173-518-085 4d, and perhaps elsewhere.

As a proprietary program, it would appear that members of the general public don't have the right to obtain it. By that I mean, obtain the compiled program, its source code and its documentation, and have the right to thoroughly examine it and run it. These things are necessary for them to obtain an understanding of what precisely it does and how it functions. For that reason, it probably has never been examined by any member of the general public.

In particular, when I asked the Department of Ecology for the groundwater model, on two occasions, I was told, both times, that it was proprietary and I couldn't have it. I thought that those Department of Ecology employees had told me a direct lie, and I complained about that in item #3 of my June 22 formal comments on this rule. However, it now appears that they told me the truth, that part of that model is proprietary and, therefore, unobtainable.

If all the components of the 2008 groundwater flow model that are needed to actually run it, aren't available to the public, then, the proposed rule is a secret rule to the extent that it rests upon those proprietary components or they are necessary for its implementation. In that case the public will be governed by a secret rule.

I recommend that an alternative in the public domain to those proprietary components be provided and that, if, the rule is implemented, it use those alternatives, instead of the proprietary components. Furthermore, there will be a need to allow time for an open public review of those components, once they become available. That is particularly important, here, as the present situation bears the appearance of, having been an attempt to avoid review.

Allow me to apologize for accusing the Departmental employees of telling a direct lie. It, now, appears that Clallam County's hydrologist, Ann Soule, was the individual who provided me with false information. She did that, first, when she responded to my testimony to the County Commissioners, in which I said that the groundwater model was proprietary and not available. She said that the groundwater model was not proprietary but was available. However, it appears, now, that part of it was available but another part of it was proprietary. Later, during the afternoon information session before the public hearing in Sequim, on June 28th, she told me that the interface was available but the USGS model wasn't. However, when I asked the Department's staff, during the question and answer session just before the formal hearing, to verify whether what she had told me was correct or not. They told me that I had it exactly backwards: The interface was proprietary but the USGS model is in the public domain.

I still haven't verified what the true situation may be. Nevertheless, whatever it may be, there should not be any part of that model including its interface, that is proprietary. It must all be in the public domain, so that it can be thoroughly examined and run by any member of the public. Otherwise, we would be governed by a secret rule.

Sincerely
Dr. Robert N. Crittenden
July 8, 2012