

July 16, 2013

Dennis McLerran
Region Administrator
Environmental Protection Agency – Region X
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140



Dear Dennis:

Your June 21st letter to Department of Ecology Director Maia Bellon offered a conclusion about Washington's current human health water quality criteria which is not accurate, and which will unnecessarily alarm the fish consuming population of Washington. The specific statement was that Washington's water quality criteria based on 6.5 gr/day fish consumption "are not sufficiently protective."

Available EPA guidance continues to support deriving human health criteria based on protection of the general population to an excess cancer risk level of 10e-6 or 10e-5 as long as subpopulations are protected to at least 10e-4¹. Washington's risk policy is embodied in two provisions of the Washington *Surface Water Quality Standards*, WAC 173-201A-240(5) and 240(6), and mimics the EPA Guidance. Pursuant to this policy the human health criteria applicable to Washington under the National Toxics Rule are based on a fish consumption rate of 6.5 gr/day for the general population, while higher consuming subpopulations are protected up to a fish consumption rate of 650 gr/day.² This high consumption rate exceeds the 90th percentile of the highest consuming subpopulation as reported in Ecology's *Final Fish Consumption Rates Technical Support Document*³. Just focusing on these two variables, consumption and excess cancer risk, yields a conclusion that Washington's current human health criteria are very protective for even the highest consuming subpopulations. When considered with the inherent conservatism of the criteria derivation process (including EPA's latest thinking on relative source contribution), EPA should support an unambiguous statement that Washington's criteria sufficiently protect state residents.⁴

¹ "EPA believes that both 10-6 and 10-5 may be acceptable for the general population and that highly exposed populations should not exceed 10-4 risk level." EPA, *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health*, at 2-6 (October 2000).

² The Department of Ecology presented this information at Policy Forum #3, February 8, 2013, page 84 of the agency presentation

³ "*Final Fish Consumption Rates Technical Support Document*," Washington Department of Ecology, January 13, 2013, at page xvi.

⁴ Note also EPA's explanation of the 6.5 gr/day FCR as being protective of high consuming subpopulations (to 150 gr/day) in agency's successful defense of the Columbia River TMDL for dioxin in a case decided by the U.S. Court of Appeals, Ninth Circuit (*Dioxin/Organochlorine Center v. Clarke* 57 F 3d 1517, 1524 (9th Cir. 1995)).

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It is unfortunate that a narrative has been perpetuated around the notions that 1) consumption of more than 6.5 gr/day fish will result in an adverse health impact, 2) Washington HHWQC are obsolete, and 3) any further delay in "fixing" this situation is somehow irresponsible. EPA is an authoritative voice on this subject. Public messaging should be technically accurate and provide appropriate context.⁵

The issues in play with Washington's on-going process to revise state HHWQC are many and complex. Weyerhaeuser Company has appreciated Ecology's on-going effort to engage and educate stakeholders, to consider new scientific information, to fully explore the viable risk management alternatives, consider viable implementation tools, and so forth. This is the groundwork for a process outcome which complies with the federal water quality standards regulation and Washington's Administrative Procedures Act, is pragmatic and durable, can be implemented across the multiple CWA programs, is cost-effective, protects public health and yields meaningful environmental benefits.

Sincerely,



Ken Johnson

Cc Dan Opalski
Maia Bellon

⁵ For example, the EPA has indicated that good scientific data supports a FCR of 175 gr/day for high fish-consuming population groups in the northwest. In discussing the protectiveness of Washington's HHWQC, the EPA could say "Washington's current HHWQC are indeed derived from an assumed 6.5 gr/day FCR. However, for those individuals choosing to consume 175 gr/day of fish (and planning to consume that much fish every day for a 70 year period), the current state HHWQC indicate a calculated increased cancer risk of 2.69x10e-5. This calculated excess cancer risk would be considered protective of human health based on current EPA guidance. EPA considers this is to be a de minimus exposure risk."