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Re: Comments – Fish Consumption Rates Technical Support Document (draft)

Dear Ms. Hankins and Ms. Conklin:

Thank you for the opportunity to comment on the Draft Fish Consumption Rates Technical Support Document. These comments are being submitted on behalf of TransAlta Centralia Mining LLC (TCM). The comments presented here are general although some specific comments are referenced by page number in the draft document, by chapter section, or both.

Statewide Default Fish Consumption Rate

It seems clear from this document that the Department of Ecology (Ecology) desires to determine a statewide default fish consumption rate. Ecology water quality staff has indicated in the recent public workshops on water quality standard implementation tools, that the default fish consumption rate chosen for sediment management standards will be used as the default for setting statewide water quality standards. However, there is no justification for setting a statewide default rate for fish consumption given in this document particularly with respect to sediment management. In fact, chapters 5 and 6 fully support not having a default rate for sediment management. There is even less basis to support using the same default fish consumption rate for setting water quality standards as for sediment management or toxics cleanup.

TCM believes that it is not appropriate to set a default rate for fish consumption and that each program (MTCA, sediments, water quality, etc.) should set rates appropriate for the intended location or program. There are clearly multiple regions and watersheds in Washington with different fish, different needs, and different populations of fish consumers. At a minimum the Puget Sound, coastal rivers and their tributaries, and the Columbia River and its tributaries

should be treated as separate and distinct ecosystem types with different needs, uses, and fish consumption rate needs. Any recommendation for a statewide default rate should be eliminated from this document and eliminated from consideration by Ecology.

Additionally, it is not appropriate for Ecology to use a guidance document to set a default fish consumption rate. If Ecology believes that there is justification for it to determine a default rate is appropriate, that determination and the setting of the rate must be done through rule making. Currently there is a moratorium on new rulemaking and there is not a justification in the guidance or any other information presented by Ecology for proceeding with new rulemakings to set a default fish consumption rate. Therefore, this process should not proceed as a rulemaking and should not include recommendations for default fish consumption rates that have the effect of a rulemaking.

Executive Summary, Preliminary Recommendation

The first paragraph of this section recommends a “default fish consumption rate in the range of 157 to 267 grams per day”. As described above, TCM believes that it is incorrect to set a “default” fish consumption rate at for Washington State at all and does not support Ecology setting a “default” rate.

The fourth paragraph of this sections states the fish consumption rates should “...reflect state and federal law and policy”. The EPA’s 2000 Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health states in section 1.6 “With AWQC derived for carcinogens based on a linear low-dose extrapolation, the Agency will publish recommended criteria values at a 10^{-6} risk level. States and authorized Tribes can always choose a more stringent risk level, such as 10^{-7} . EPA also believes that criteria based on a 10^{-5} risk level are acceptable for the general population as long as States and authorized Tribes ensure that the risk to more highly exposed subgroups (sportfishers or subsistence fishers) does not exceed the 10^{-4} level.” Ecology seems to have ignored this guidance and chosen to focus completely on subsistence fishers to develop the suggested range of 157 to 267 grams per day and is planning to set fish consumption rates at a level to protect these fishers at or near the 10^{-6} risk level. This is clearly a much higher level of protection than is required by “federal law and policy”.

The EPA’s AWQC guidance clearly uses fish consumption to set a reasonable risk level for different classes of fish consumers. This is significantly different than the Washington MTCA and its requirement for setting a “reasonable maximum exposure” or RME. There are different purposes for the use of a fish consumption rate in these regulations and therefore, different fish consumption rates need to be used for applying these regulations. Ecology must not set a default fish consumption rate to be used for these distinctly different purposes.

The document must include data on fish consumption rates for “the general population” of Washington State. That data is needed to develop rates that provide a 10^{-6} to 10^{-5} for “the general population” and “not exceed the 10^{-4} level” for subsistence fishers. Without this data, the document will not allow Ecology the ability to appropriately evaluate the proper levels to set for fish consumption. To set fish consumption rates higher than those levels will result in more restrictive water quality standards than necessary and will likely result in unachievable standards that are lower than background levels.

Chapter 5, Accounting for Exposure and Fish Diet Fraction in Salmon and Other Anadromous Fish Consumption

The document identifies salmon consumption, fish diet fraction, and the fact that salmon and other anadromous fish obtain little or none of their body burden of contaminants from Washington waters as issues. However, the document proceeds to include salmon in the fish consumption estimates weighted equally with fish that spend their entire lifecycle in Washington waters. In addition to including the salmon consumption in the fish consumption, it appears to be weighted equally with all other fish consumption. At a minimum, this document should evaluate and include data on the portion of body burden of contaminants that anadromous fish obtain from Washington waters, so that an appropriate fish diet fraction can be calculated for these fish. As noted above, these fractions would likely be different for anadromous fish from the Puget Sound, the Columbia River, and from coastal rivers. This data must be included or anadromous fish must be removed from the fish consumption estimates that are used for regulatory purposes.

Chapter 5, Table 26

Table 26 includes information that is out of date and in conflict with information in Table 24.

Please feel free to contact me at (360) 330-8209 or dennis_morr@TransAlta.com if you have any questions related to these comments.

Sincerely,



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