The Confederated Tribes of the Colville Reservation
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October 29, 2012

Ted Sturdevant, Director
Washington State Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

RE: Sediment Management Standards Rule Revisions, Chapter 173-204 WAC

Dear Mr. Sturdevant:

Thank you for the opportunity to comment on the proposed Sediment Management Rule, please accept this letter and the attached technical comments on behalf of the Confederated Tribes of the Colville Reservation ("Tribe"). Attached, you will find formal technical comments. However, in addition to the technical comments, there are four conceptual issues that the Tribe wishes to highlight in regards to the process of the rule making, as well as an underlying suggestion for moving forward.

First, the Tribe is deeply concerned about moving forward with the rule making without resolution of outstanding technical issues. As recently as Friday October 24, 2012 the Tribe and the Department of Ecology were engaging in discussions about technical issues such as biological toxicity criteria and statistical treatment of toxicity data. For several years, the Tribe and others have raised significant technical issues with the proposed rule, and urged the Department of Ecology to utilize fundamentally different assumptions and criteria in formulating the sediment management standards. These technical issues have not been resolved, nor has the Department of Ecology been able to scientifically justify rejection of the suggestions from the Tribe and its consulting experts. The Department of Ecology an obligation to ensure that this rule is promulgated using the best available science. There are simply too many unresolved technical issues for the Tribe to support the rule without the significant changes presented in the attached technical comments.

Second, the Tribe believes the EIS is fundamentally flawed, and must be reissued subject to public comment. The purpose of the EIS is to provide impartial discussion of significant environmental impacts and inform decision makers and the public of reasonable alternatives, including mitigation measures, that would avoid or minimize adverse impacts or enhance environmental quality. As a matter of process, the Tribe believes that these purposes can only be achieved by publishing an EIS after submission of public comments on the proposed rule. The comments offered by the Tribe and others offer significant information regarding the SMS Floating Percentile Method, derivation of cleanup levels, and data analysis, that should be used for purposes of assessing environmental impacts and developing alternatives. By promulgating the EIS before completion of the comment period the Department of Ecology inappropriately limited the range of alternatives considered and potentially minimized assessment of environmental impacts, since there was no possibility that an alternative based on comments and technical feedback would be analyzed in the EIS and the analysis of existing alternatives fails to consider contrary scientific and technical comments offered by the Tribe.

Third, and perhaps most importantly, the proposed rule raises significant environmental justice issues. The Columbia River and Lake Roosevelt are the heart of the Colville Tribe. The River provides

subsistence, recreation, revenue, and is the homeland of tribal members, and both the past and the future of the Tribe are inextricably linked with the Upper Columbia River. Due to its size and character, biological toxicity data from the Upper Columbia River site dominates the state-wide dataset considered for predominately metals contaminated sediment sites. Sediment quality of the UCR/Lake Roosevelt site is disproportionately impacted by smelter-sourced metals. The smelter sourced metals contamination in UCR is itself heavily influenced by the pervasive presence of slag, which exerts a confounding effect on predicting sediment toxicity as a function of metal concentration – the statistical essence of deriving cleanup levels via the SMS Floating Percentile Method. As a direct consequence, SMS sediment cleanup levels for slag metals are demonstrably underprotective of human health and the environment and will have a significant and disproportionate adverse impact on Colville Tribal members. As stated in the Tribe's comments, because the SMS depends upon data that is disproportionately affected by slag metals predominantly found in the UCR site, cleanup under the draft SMS would be driven towards a deminimus level that would not adequately protect aquatic organisms or higher trophic levels.

Finally, as a matter of comity and regulatory expediency, the order of magnitude difference between the Department of Ecology's proposed sediment quality values and the Tribe's sediment quality values is unacceptable. The proposed rule undermines the Tribe's standards, and creates a situation where regulated entities may seek to use the State's standards to assert that the Tribe's standards are too low and should therefore be disregarded. We know from past experience, that these types of significant discrepancies are detrimental to both the Tribe's and the State's regulatory efforts. The final rule should provide for consistent regulation, and give full effect to the Tribe's sediment quality standards.

At a minimum, the following changes must be made to the proposed rule. First, Tables 7 and 8 must be modified in accordance with the Tribe's recommended standards, or in lieu of adopting the Tribe's recommended standards, Tables 7 and 8 should be modified to exclude Cu, Pb, Zn. Second, regional background must be appropriately determined. Third, the Tribe's sediment management standards must be clearly recognized in the rule, not just the guidance, as ARARS. Without these fundamental changes, the Tribe's interest will be significantly harmed, and not only will the Tribe be unable to support adoption of the rule, it may unfortunately, be forced to actively oppose it. This would be an extremely disappointing outcome, but I have every reason to believe we can work together to successfully address the Tribe's concerns. We look forward to meeting with you for a government-to-government consultation on this issue in November.

Sincerely,

Gary Passmore, Director
Environmental Trust Department

Cc: John Sirois
Chaitna Sinha
Don Hurst