



THE TULALIP TRIBES

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6406 Marine Dr. TULALIP, WA 98271
Phone (360) 716-4000
FAX (360) 716-0606

The Tulalip Tribes are the successors in interest to the Snohomish, Snoqualmie, and Skykomish tribes and other tribes and bands signatory to the Treaty of Point Elliot

October 26, 2012

Washington Dept. of Ecology
Toxics Cleanup Program
PO Box 47600
Olympia, WA 98504-7600

Dear Sir or Madam,

Sixteen years ago the Tulalip Tribes, together with the Squaxin Island Tribe, published the results of our fish consumption survey, indicating that our tribal members consume, despite diminished and less accessible populations of fish and shellfish, dramatically higher amounts of fish than is assumed under the State of Washington's current rate of approximately 6.5 grams/day. Fish have been an integral part of our traditional diet for a very long period of time. It does not surprise us that modern health experts have become so aware of the importance of fish in contributing to the health of the general public, and recommend that it be consumed in significant quantities by all.

For Tulalip, as with many other tribes across the country, rates of diabetes, obesity and other chronic diseases have become epidemic among our people. In an effort to combat these alarming health trends, we have established several tribal programs aimed at encouraging individual tribal members to return to a healthier diet, including a diet richer in traditional foods -- in our area that means a lot of fish and shellfish. We want to be able to eat fish at levels that are more consistent with our traditional diet and what public health experts recommend.

It is unfortunate that Ecology appears to have bowed to pressure from industry in revising its sediment management standards (SMS). With these proposed amendments, Ecology is failing its mission "to promote the wise management of our air, land and water for the benefit of current and future generations." Ecology fails to establish a default fish consumption rate (FCR) that is consistent for SMS and water quality standards. It arbitrarily separates SMS from water quality standards. Further, the details of these amendments slant definitions and exposure scenarios in favor of Potentially Liable Parties (PLP), to the detriment of tribal individuals and future generations.

Two years ago, Ecology asked that tribes wait until a numeric default FCR was established in the state's sediment management standards for toxic cleanup. However with these amendments, Ecology does not include a default FCR in the revised sediment management standards. Ecology steps backwards by allowing a site-specific approach that requires tribes to negotiate fish consumption rates and other critical parameters

with PLP's for every contaminated sediment site in their usual and accustomed fishing areas (U&As). Tulalip tribal members fish from Point Roberts down to Seattle, encompassing approximately 1800 sq. miles of marine waters influenced by 2,629 sq. miles of freshwater inputs. This piecemeal approach stretches tribal staff and resources, and does not allow for a comprehensive review of impact on individual tribal members, who may fish predominantly in only one or two locations. Their exposure risk is discounted by the "alternate" exposure scenarios, such as Fish Diet Fraction and Site Use Factors.

Reasonable Maximum Exposure is intended to reflect actual exposures of real people under realistic present or future conditions. Tribal dietary studies of fish consumption are neither hypothetical nor unrealistic—they are scientifically-designed, peer-reviewed dietary studies of tribal members who consume primarily locally-harvested fish. In these amendments, Ecology includes provisions to reduce the FCR if the site is small or the habitat will not support sustainable quantities of the species at the determined FCR. If an individual fishes at a site within the Tribes' U&A that only produces 10% of the total Tulalip catch and that site has contaminated sediment, the exposure scenario could falsely assume that only 10% of fish that an individual consumes has x grams of PCBs. When in reality, that individual could get 80% of all fish that he or she consumes from that one area. There is no justification for the application of a Fish Diet Fraction less than 1.0 in areas where tribes historically, currently, or potentially harvest fish and shellfish. Any exposure factor less than 1.0 poses an unacceptable risk to individual tribal members.

Another tool that reduces the protective level of SMS requirements is the Site Use Factor (SUF). The SUF refers to the percentage of time that a fish/shellfish is in contact with contaminants at the site based on the species' life history and home range. Ecology's proposed standards not only fail to look at consumption in the aggregate of contaminated sites, they attempt to further slice up the required level of site clean-up by separating by species, size of the site, and time of exposure. There is no scientific way to assess how much time a species has spent at a site or how much chemical burden a species has picked up in any specific geographic area, thus a site use factor is subjective and variable. Therefore, there is no justification for the application of a Site Use Factor less than 1.0 in areas where tribes historically, currently, or potentially harvest fish and shellfish without posing unacceptable risk of exceeding safe exposure levels. The concept of applying a Site Use Factor using the concept of a fraction of the home range or the estimated duration of contact with a site should be eliminated from the SMS.

Ecology must re-examine its definition of "natural background." The very contaminants that tend to bioaccumulate in fish tissue, like PCBs and Mercury, are persistent throughout the environment due to their distribution and deposition. While it makes sense to refer to substances that "*naturally occur* due solely to the geologic processes that formed these materials" as natural background, the remainder of Ecology's definition warps the word "natural." Moreover, if Ecology is permitted to redefine natural background in this manner, it will alter our environmental baseline forever. If the "new natural" includes PCBs, all cleanups going forward will aim, at best, to reduce contamination to this new (contaminated) baseline. Natural background definitions should be limited to natural, not to include widespread persistent contaminants introduced by human activities.

The separation of the sediment management standards from water quality standards is unprecedented. Water quality and sediment quality are inexorably linked together. The SMS should be reviewed as and cross referenced to state water pollution control standards, and the applicability of both the Clean Water Act and Model Toxics Control Act should be specified.

Another inconsistency in the SMS is the applicability of water quality standards between freshwater and marine/ estuarine environments. Freshwater tables in the SMS rule are not being promulgated as water quality standards, but marine and estuarine waters are. Consistency is needed between freshwater and marine/estuarine environments as water quality standards so that Ecology can add areas to the 303d list of impaired water bodies and take action as necessary. Additionally, given that rivers are sources of sediment for marine and estuarine areas, the freshwater numbers should apply as water quality standards. Unlike freshwater, marine/estuarine site cleanup standards are determined based on ecological risk. Under the proposed standards, freshwater environments are evaluated for aquatic life, but not for human health. This approach is inconsistent—if standards apply to insects and benthic organisms, they should apply to fish and human health. The differences in the applicability of the standards puts the burden of proof on those who are seeking to protect human health. It is inappropriate to leave it to the discretion of the site manager to choose which standards apply.

At treaty times, tribal members consumed all of their fish from local waters and still continue to obtain most of their fish from local sources. Tulalip Tribes' reserved rights under the treaties and other legal agreements entitle them to continue to do so in perpetuity. Many tribal members would consume more fish and shellfish than they do at present, were these resources not depleted or contaminated. We are working toward a future with restored ecosystems that support fisheries resources in abundant levels, with a variety of species that are safe to eat. We have the intent, potential, and legal right to consume a mix of species of fish in the future. Tulalip Tribes are prepared to work with the Department of Ecology on the completion of toxic cleanup and water quality standards on a government-to-government basis to protect tribal rights and the health of future generations.

The Tulalip Tribes fully support all the comments submitted by the Northwest Indian Fisheries Commission (NWIFC) regarding the revisions to the SMS. We remain committed to ensuring the revision and adoption of a new Fish Consumption Rate that is protective of our members' health, and again implore you to move forward expeditiously in the establishment and adoption of a new and accurate fish consumption rate for the State of Washington.

Sincerely,



Ray Fryberg, Sr.
Executive Director
Tulalip Tribes Natural and Cultural Resources Department