



Swinomish Indian Tribal Community



Suquamish Tribe



Jamestown S'Klallam Tribe

March 14, 2014

TO: Jay Inslee, Governor; Washington State

FROM: Leonard Forsman, Chairman; Suquamish Tribe
Brian Cladoosby, Chairman; Swinomish Tribe
Ron Allen, Chairman; Jamestown S'Klallam Tribe

RE: Washington State Water Quality Standards

Dear Governor Inslee:

We would like to thank you for engaging with tribal leaders during the past year to address the difficult issue of adopting revised human health criteria in the Washington State water quality standards. According to the revised timelines that have been provided to the tribes from Department of Ecology Director Bellon, the state is scheduled to issue draft rule language at the end of March. Those of us who have participated at the Governor's Informal Advisory Group (GIAG) would thus like to provide you with some comments in anticipation of the rule. We believe that it is in everyone's best interest that the process for developing the rule is clear, transparent, and timely; and that the substance of the rule will provide needed protections for all Washington citizens from future exposure to toxic chemicals.

We want to express our understanding of the roles, responsibility and purpose of your informal Advisory Group. As you recall, we sent a letter to you on August 14, 2013, sharing our commitment to discuss recommendations related to the implementation of a future new rule for Washington State. With this said, we believe a majority of the discussion did very little to provide recommendations for implementation; instead the discussion once again revisited fish

consumption rates, risk rates, exclusion of salmon, and potential technology for detecting toxic chemicals. Tribes have clearly and repeatedly stated that a fish consumption rate of 175 grams per day at a cancer risk rate of 10^{-6} is a major compromise, and a necessary floor for discussion of implementation. The most recent recommendation of a cancer risk rate of 10^{-5} is a ten-fold increase in the existing risk of cancer, and the notion of a fish consumption rate without salmon is an unacceptable choice. Tribal leaders have been clear; not only the 20 treaty tribes of western Washington but the 57 Tribes of the Affiliated Tribes of Northwest Indians have been urging the adoption of human health criteria of at least 175 grams per day and a risk rate of 10^{-6} . We have not wavered in our verbal and written messages to Washington State or to the United States Environmental Protection Agency.

Implementation is the key to ensuring that any standards are effective on the ground for protecting human health, and implementation is where there is the potential to assist economic prosperity now and in the future. The tribes have repeatedly offered to work with the State on flexible and reasonable implementation tools that would assist cities and businesses in keeping economic prosperity and achieving improved water quality. Tribal leaders have been steadfast on the need for meaningful and effective water quality standards for years, regardless of the transition of tribal leadership. After a decade of collaboration with two Governors, three Department of Ecology Directors, and state staff, we believe it is time for a decision to be made so we may truly move into implementation. We are committed in supporting you, Governor Inslee, in a decision that will protect the human health, economy and environment of Washington State for generations to come.

Attached are our formal comments on the discussions of the Governor's Informal Advisory Group and a copy of the presentation that we gave at the February 7, 2014 meeting.

Comments on the Discussions of the Governor's Informal Advisory Group

March 14, 2014

We continue to urge the state to proceed with the adoption of a more protective rule as soon as possible in accordance with appropriate state and federal requirements. The process of adopting revised human health criteria into state water quality standards has been long and convoluted. Scientific studies documenting higher fish consumption rates by Washington tribes have been released continually over the past 20 years. Since the triennial review of state water quality standards in 2002-2003, the process of revising state water quality standards has spanned two governors and three directors of the Washington Department of Ecology. The state switched the analysis of the fish consumption rate to the rule-making process for the cleanup of contaminated sediment and then back to the water quality standards. The state has set up a Policy Forum, Delegates' Table, Toxics Reduction Roundtable, Governor's Informal Advisory Group, and a Creative Solutions Group. Administrator McLerran indicated last June that the EPA wants to see the state take the lead in adopting protective standards, but he also noted that the time is growing short for the state to complete this process.

We remain consistent in our assertion that a fish consumption rate of at least 175 grams per day at the existing cancer risk rate of 10^{-6} is a substantial, but reasonable compromise. Our letter of August 14, 2013 to Governor Inslee, in response to his invitation to participate in the GIAG, stated that, "The scope of the advisory group should address implementation, not the calculation of the human health criteria or the fish consumption rate." Our letter made clear that we hoped the GIAG would work to chart a path forward for future implementation, enlisting the best efforts of the leaders who were brought together. Despite our clear position, most of the recent discussion continues to revisit issues related to the calculation of human health criteria, including the fish consumption rate, cancer risk rate, inclusion of salmon, and other variables that the tribes have already commented on repeatedly.

Our primary concern at this time is to ensure that Washington's revised water quality standards protect the health of tribal citizens. At the February 7, 2014 meeting of the GIAG, the Governor described two potential plans for rule provisions. Based on comments from tribes in the past, it is clear that many tribes would be willing to consider Plan A, depending on the fish consumption rate, other aspects of the human health criteria, and the specifics of the compliance pathway. Plan A, however, also implies an easier pathway to compliance for dischargers. We have consistently said that we support a reasonable pathway for compliance for businesses and municipalities, but we do not think it is appropriate to engage in a trade-off of protective water quality standards for effective implementation of the Clean Water Act. Without more specifics, it is impossible to comment further, and tribal leaders are reluctant to engage in yet more process without assurances that the human health criteria will meet or exceed those adopted in Oregon and approved by EPA.

Any increased risk of cancer is a harm. The essential difference in the Plan A-Plan B options, with respect to rule-making, is the potential ten-fold increase in the risk of cancer by changing state standards to a risk rate of one-per-100,000 (10^{-5}), a change which the tribes vehemently oppose. American Indians/ Native Americans are already twice as likely to develop and die from certain forms of cancer, such as stomach and liver cancer, than the non-Indian population. There is no justification for increasing the risk of cancer in state water quality standards--a risk which will disproportionately fall on tribal citizens, and one that they do not voluntarily assume. The proposed increase in the cancer risk rate is also a major deviation from existing state policy in effect for the last two decades Plan B appears to retreat from, rather than work to implement, the protective standards that tribes indicated would be essential when they responded to the Governor's invitation to the GIAG in the August 14, 2013 letter.

We are also seriously concerned about the Department of Ecology's apparent intent to whittle away at other variables of the human health criteria, which will result in less protective standards. Tribal technical staff indicates that the Department of Ecology's recent proposals related to other human health criteria variables (e.g. body weight, relative source contribution,

drinking water, and potentially others) may exhibit a bias towards options that create leniency for dischargers rather than more protection for human health. The Federal Clean Water Act was established to improve water quality over time, and a retreat from protective standards thwarts the intent of the Act.

Tribes understand the Governor's desire to invest in the most effective strategies to protect and improve water quality, and we believe that protective standards are the appropriate foundation for implementation.

Water quality standards, with protective human health criteria, serve as the hub for many strategies to reduce toxic chemicals in Washington State. We have directed staff to work with the Department of Ecology to support the development of accountable and timely compliance tools in the upcoming rule, along with additional implementation efforts to complement the implementation of water quality standards. Key issues include:

- **Develop compliance tools that are reasonable while moving towards the achievement of standards.** Compliance tools within the rule are established to meet the Clean Water Act while providing flexibility for dischargers. We support provisions that will ensure measurable progress, achieve the highest level of water quality as soon as possible, and ensure protection of tribal lands and waters.
- **Develop consistency and improved coordination between clean-up and water quality programs.** Washington State has a backlog of contaminated sites and tribes support accelerated efforts for clean-up, in conjunction with protective standards for both cleanup and prevention of new toxic chemicals.
- **Maintain and enhance monitoring and other activities that support the implementation of the Clean Water Act.** This includes the analysis of toxic chemicals in fish tissue, identification of impaired water bodies using those methods, and development of Total Maximum Daily Loads (TMDLs) to identify the sources of contamination and assign responsibilities.
- **A broader toxics reduction effort in Washington State.** The Governor established a working group within the GIAG, called the Creative Solutions Group, which was intended

to complement, but not supplant, the Department of Ecology's rule-making efforts. We respect the efforts of the Creative Solutions Group and appreciate Chairwoman Kendall's work in convening and recording the work of the group. While we do not support all of the findings and conclusions issued by the Creative Solutions Group at the Governor's meeting on February 7, 2014, some of the ideas raised by the group merit future discussion, and we remain willing to engage staff in further refinement of potential options as long as the state moves forward with protective water quality standards.

- **Advance efforts for the reduction of non-point source pollution.** We concur that point source discharges are only a portion of the pollutant problems in Washington State. Therefore we urge you to recognize the importance of a clear regulatory standard in advancing efforts to address non-point source pollution.

Tribes in Washington State, and our neighboring tribes in Oregon, have been waiting a long time for significant improvement in the state's water quality standards to ensure that our treaty rights and our health are protected. The status quo is putting our children and elders at risk on a daily basis. We urge you to work for a rule that respects tribal governments, protects the health of Washington citizens, and is adopted and implemented as soon as possible.

Finally, we repeat once again that those of us who participated in the Governor's Informal Advisory Group were not empowered to speak for other tribes or to engage in rule negotiations. On February 7th a tribal perspectives presentation was provided to the GIAG articulating the tribal position and outlining a path forward (attached). Additionally, a technical paper on compliance tools and implementation compiled by tribes will be provided to Ecology to support rule-making efforts. It is our expectation that government-to-government consultation with tribes will still occur, and that it will have a meaningful impact on the rule decision.