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RE: Comments on Proposed Human Health Criteria Water Quality Standards & Implementation Tools Rulemaking

Dear Honorable Governor Inslee, Washington Department of Ecology, and U.S. EPA:

We, the undersigned organizations and businesses, write to express our strong support for accurate water quality standards that protect public health. Washington State's draft human health criteria rulemaking fails to protect people who regularly eat locally-sourced fish and shellfish. We write to express our concern that the current proposal under consideration is neither strong, nor accurate. We urge Washington State to revise the draft rules to protect public health and step away from the arbitrary and illegal approach that results from the manipulation of relevant equations and use of pollution loopholes. If the State fails to protect public health and correct its proposal, we ask the U.S. Environmental Protection Agency (EPA) to exercise its authority to ensure that consumers of fish and shellfish are protected in accordance with Clean Water Act requirements.

From Puget Sound to the Columbia River—and in countless other waterbodies across the state—catching and eating local fish and shellfish is a quintessential part of

being a Washingtonian. Yet Washington's draft human health water quality standards rulemaking fails to value to importance of eliminating toxic pollution in fish and shellfish. Our members and businesses value and rely on locally-sourced foods, but will not tolerate unsafe levels of toxic pollution. The draft rulemaking fails to prevent cancer-causing pollutants from entering our state's rivers and Puget Sound. For two of the most dangerous toxics in our waters—PCBs and methylmercury—Ecology has proposed a rule that leaves inadequate protections in place; for a third, arsenic, Ecology has proposed a roughly 555-fold increase in allowable concentrations. This is simply unacceptable. We urge you to revisit the matter and propose rules that place a high value on protecting Washington communities by reducing—and eventually eliminating—dangerous toxic pollution in food.

First, by setting strong and accurate standards, the State can reduce the amount of pollution industry and cities discharge to waterways—a critical step toward reducing cancer-causing pollutants in fish and shellfish. Instead, the State's proposal provides only the appearance of new protection while manipulating the math as necessary until the state is able to ensure that the actual water quality standards will remain largely-unchanged. While Washington State's proposal pays lip service to the underlying problem with inadequate standards, it increases allowable cancer risk for Washington residents tenfold, from one in a million to one in a hundred thousand. In attempting to explain that decision, Washington indicates that it is doing so because it must consider heavier fish consumers in this rulemaking. That decision—to lower the consideration of cancer risk for those most affected—is shocking and contrary to the law, to environmental justice principles and negates any of the progress made by using a more accurate fish consumption rate. We urge you to revise the proposed rules based on a cancer risk rate of one in a million across the board.

Second, we urge you to reject industry-backed compliance loophole proposals to gut the effectiveness of all water quality standards. The overarching purpose of water quality standards is to protect and return our nation's waters to a state of cleanliness that supports all uses of those waters. Specific to Washington's human health criteria, the point is to adopt new water quality standards to actually improve water quality and the health of people who regularly eat fish. We are deeply concerned, given the very modest change to the standards (and the fact that many of the standards won't change at all), that the "regulatory tools" proposed in the rulemaking package will, instead, result in more pollution in Puget Sound and waterbodies across the state. It is important to note that what Ecology proposes is not just compliance off-ramps and loopholes for new stricter standards, *but for all water quality standards throughout the state*. It thereby appears that industry has simply used the claim that it will be difficult to comply with new toxic standards (that we now know aren't really new and certainly aren't any stricter) to

get huge new breaks in complying with water quality requirements across the board. This is outrageous.

Industry already benefits from various loopholes that excuse or delay compliance with water quality standards. These include toxic mixing zones, compliance schedules in permits, variances, use attainability analyses, site-specific criteria, and water quality offsets. Ecology now proposes to greatly extend the timelines for these dirty water compliance loopholes—in many instances for decades—and to loosen the requirements for granting them. Variances and compliance plans will now, for all intents and purposes, be utterly open-ended.

Yet Ecology's rulemaking package does nothing to ratchet back toxic pollution by amending existing pollution off-ramps. For example, Ecology's current rules provide for mixing zones for bioaccumulative toxic pollutants. Mixing zones allow industry and cities to discharge high levels of pollutants, including dangerous toxins, in the hope they will be "mixed" and "diluted" in the water downstream. Mixing zones for bioaccumulative toxic pollutants are not supported by the best available science. Studies demonstrate that most toxic chemicals are not diluted. As Ecology's own reports demonstrate, many dangerous toxins like PCBs, dioxins, lead and mercury build up and accumulate in the fish we eat, sometimes many miles from the source. In fact, EPA and the Great Lakes states banned mixing zones for bioaccumulative toxins in the late 1990s. In the instant rulemaking, Washington State and EPA should take a similar approach to protect people from bioaccumulative toxic pollutants.

In addition to the comments above, we urge Washington State to revise the proposed rulemaking package to:

1. Adopt a uniform cancer risk rate no less protective than 1×10^{-6} (i.e., one in one million) that does not allow exceptions for any pollutants, in particular for PCBs or arsenic.
2. Reject multi-discharger and statewide variances of more than five years that facilitate an increase in toxic pollution across the state.
3. Reject compliance plans that last longer than the underlying permits for which the compliance plan is required.
4. Reject so-called "intake credits" as difficult to enforce and because many of these pollutants are bioaccumulative and toxic even in very small amounts and many of them build up in fish and shellfish.

5. Revise the PCB criterion which, as proposed, would stay the same. PCBs are cancer-causing and so toxic they were banned in the 1970s, but are still in some polluters' discharges.
6. Revise the arsenic criterion which, as proposed, would to become 555 times less protective.
7. Prohibit giving polluters decades to decrease and end their toxic pollution even though the Clean Water Act directed toxic pollution to **end** in the 1980s.
8. Ban mixing zones for bioaccumulative toxic pollutants.

As organizations with hundreds of thousands of members and businesses that rely on clean water, we urge you to make disease prevention and safe fish and shellfish a priority for this state. Stand on the side of public health: Reject industries' math games and loopholes in favor of accurate, protective human health water quality standards.

Sincerely,

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