



UPPER SKAGIT INDIAN TRIBE

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March 23, 2015

Submitted via email: swqs@ecy.wa.gov

Maia Bellon, Director
Washington Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

ATTN: Water Quality Program swqs@ecy.wa.gov Cheryl Niemi

RE: Comments on the State's Draft Rule for Human Health Criteria and Implementation Tools in Washington State Water Quality Standards

Dear Director Bellon,

The Upper Skagit Indian Tribe (USIT) has contributed, through the NWIFC and our efforts in the Skagit River Watershed, our concerns for the protection of the health of tribal people and respect for our treaty-reserved rights to the harvest of fish and shellfish. The State of Washington and the US Environmental Protection Agency have allowed significant delays and the State has taken many years to develop and propose adoption of revised water quality standards. After all of this time we are writing to express our discouragement with the provisions of the proposed draft rule for human health criteria and implementation tools in the Washington State water quality standards.

After 20 years of information, the proposed fish consumption rate (FCR) does not protect tribes and other people who consume high levels of fish; furthermore the State has now opted to cancel out the potential benefit to public health by reducing the protective level of other parts of the standards. Fish consumption is a lifeway and essential part of the nutrition and economies of tribal communities. The current FCR in Washington of 6.5 grams/day assumes only one meal of fish per month. The Washington Department of Ecology has proposed a fish consumption rate of 175 g/day in the draft human health criteria-about one meal per day. Many tribal families and individuals eat fish multiple times per day. Although 175 g/day would be a step forward, the State's proposal to reduce the protective level of the cancer risk rate by ten times, from one per million (10^{-6}) to one per hundred thousand (10^{-5}) negates the benefit of setting a higher fish consumption rate, and leaves many cancer-causing and highly toxic chemicals at status quo. We urge the State to adopt the one per million (10^{-6}) cancer risk rate supported by the US EPA and previously supported by the Department of Ecology.

Additionally, implementation tools should be adjusted so that they are directed towards accountability and not a set of tools to help dischargers avoid compliance and negate the purpose of the water quality standards. We suggest the proposed compliance schedule revisions that leave the schedule to the discretion of the Department of Ecology on a case-by-case basis are especially egregious. USIT similarly finds the proposed changes for the variance program overly broad. The proposed rule for compliance schedules, variances and intake credits has the effect of nullifying the spirit and intent of the Clean Water Act.

The Tribe has other concerns about the proposed draft rule, and we adopt the comments on the draft rule that are being submitted by the Northwest Indian Fisheries Commission in March, 2015. Washington State is required to meet the provisions of the Clean Water Act to preserve the beneficial uses of water, including fishing. The public health issues that are determined by these standards affect everyone in Washington who eats fish. On top of this concern, the State is fully aware that tribes have a right to take fish at all their usual and accustomed fishing grounds and stations.

As extracted from the 2014 highlights of the Centennial Accord:

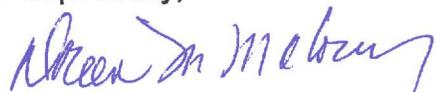
Ecology's **Water Quality Program** prevents and cleans up water pollution and helps communities make sustainable choices that reduce and prevent water quality problems. It conducts water quality assessments, develops water quality improvement plans and manages point-source discharge permits and stormwater permits.

» Ecology has worked closely with tribal leadership and staff in the human health criteria update to the state water quality standards.

The rule proposal sabotages the confidence and intent of collaborative processes in achieving complete Accord between the State of Washington and the federally recognized tribes in Washington. The State has a duty to ensure that the fish are safe to eat so that the tribes will be able to exercise their fishing rights. The proposed rule by the State of Washington does not meet this requirement.

If you have any questions regarding this comment letter, please contact Lauren Rich, Manager, Environmental Planning and Community Development at (360) 854-7006.

Respectfully,



Doreen Maloney, General Manager &
Executive Director, Economic Development and Treaty Entitlements

CC: Scott Schuyler, Natural Resources Policy Coordinator, USIT