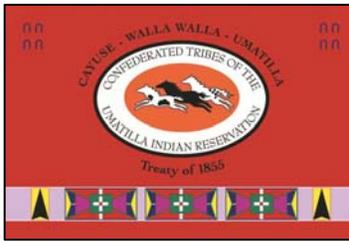


Confederated Tribes *of the*
Umatilla Indian Reservation

Department of Natural Resources
Administration



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Via E-Mail / U.S. Mail

March 23, 2015

Maia Bellon, Director
Washington Department of Ecology
c/o Cheryl Niemi
Water Quality Program
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RE: Comments on Washington's Proposed Rule for Human Health Criteria and Implementation Tools in State Water Quality Standards

Dear Director Bellon:

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) Department of Natural Resources (DNR) appreciates the opportunity to comment on the proposed rule for revising Human Health Criteria and Implementation Tools for the State's Water Quality Standards (Rule). While the Rule contains some positive elements, the CTUIR DNR cannot and does not support the overall Rule, and encourages the Washington Department of Ecology (WDOE) to reconsider a number of its proposed revisions.

The CTUIR DNR understands that the Rule reflects certain political choices and decisions as you alluded to at your public hearing in Lacey, Washington, on March 12. Nevertheless, that direction should not lead to a Rule that subverts the purpose and intent of the Clean Water Act. It should not establish weaker, inconsistent, contradictory water quality standards and regulations for waterways over which the State shares jurisdiction and authority with others. It should not result in a Rule that does so little to improve the health and well-being of Washington's citizens and the fish and other natural resources on which they depend.

The CTUIR DNR's comments endorse and incorporate by reference the comments of the Columbia River Inter-Tribal Fish Commission (CRITFC) and the Northwest Indian Fisheries Commission (NWIFC). Our comments highlight a few of the principal objections we have to the Rule, and are by no means intended as an exhaustive examination.

The CTUIR DNR supports the proposed increase of the assumed Fish Consumption Rate (FCR) to 175 grams per day. This is an initial, reasonable "floor" to consider using in the equation to develop State standards, one which has been adopted by Oregon and one which the CTUIR has found acceptable in establishing state-wide standards. It is, however, a significant compromise and does not accurately reflect the much higher levels of fish consumption by many tribal

members that a number of consumption surveys have quantified. In fact, the CTUIR has adopted on-reservation standards based on a rate of 389 grams per day.

The CTUIR DNR opposes the proposal to weaken the cancer risk level from 10^{-6} to 10^{-5} . The traditional, widely-accepted risk assessment criteria of 10^{-6} , allowing for no greater cancer risk than one in one million, should be maintained. WDOE has offered insufficient justification for changing this number. There has been no explanation of how changing this number—assuming (and accepting) a 10 times greater cancer risk in calculating standards—actually offers any *benefit* to Washington's citizens. At most there has been the claim that it is permissible, but no claim that it is *beneficial*. Furthermore, any claim that it is allowed under EPA guidance is incorrect. Tribes are part of the general population that use and enjoy fish that are found in, migrate through, or are otherwise affected by nearly all waters within the State.

Weakening the cancer risk level negates any improvements resulting from increasing the fish consumption rate. It would leave the current limits on discharges of many cancer-causing and highly toxic chemicals at status quo levels. Weakening the acceptable cancer risk level is a bad precedent for the State to set when developing environmental policies that should aim to protect the long-term health of the public instead of acquiescing to short-term economic demands. It is also disingenuous to suggest that inadequate standards are acceptable because there is a vague and uncertain possibility that mechanisms *may* be adopted to further regulate and *possibly* ban a relative handful of toxic chemicals at some rather distant point in the future, following years of process and the availability of numerous off-ramps.

Regional waters are already polluted, fish are already contaminated, and governments need to work together to clean them up for current and future generations. Many miles of rivers and streams in Washington are already listed as contaminated with PCBs and other toxics such as dioxin, DDT by-products and heavy metals, including mercury. Studies have found multiple chemical contaminants in many varieties of fish.

The revised Rule should specify quantitative requirements that demonstrate how Washington will “maintain a level of water quality when entering downstream waters.” Proposed narrative language in the Rule would not assure that downstream standards will be met. Downstream protection and regional consistency in water quality standards is an objective the Rule should strive for.

The CTUIR has ceded lands in Washington, and its members fish in “downstream” waters. The “right of taking fish” at all usual and accustomed places was guaranteed by the Treaty of 1855 with the United States. Inherent in the right of taking fish is that there are fish to take, and that those fish are safe to eat. The tribal representatives did not sign treaties securing the right to harvest and consume contaminated fish.

Fish advisories do not address the problem. It is unacceptable to suggest that tribal members could simply avoid higher risk by simply eating less fish—that eating more fish is “voluntary,” and the higher risk is assumed voluntarily (which is the presumption behind advisories). The

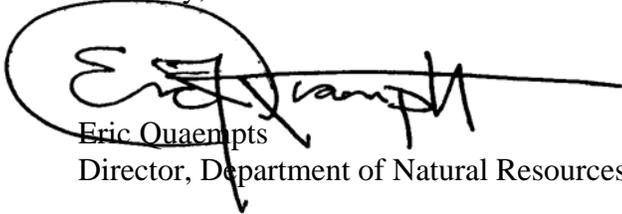
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ability to freely and fully exercise rights protected under the United States Constitution should not come at the cost of excessive danger to health and well-being. Cancer should not be the penalty for adhering to time-honored rights and traditions.

The CTUIR DNR has concerns about many additional aspects of the Rule including the choice of relative source contribution, drinking water intake, body weight, updated toxicity factors, proper consideration of bioaccumulation in fish tissue, and the implementation tools. We recognize that compliance may appear challenging and worrisome to the regulated community. There is a need for some flexibility and accommodation in the implementation of any new standards. However, we share many of the concerns expressed in the other referenced comments about the excessively-generous nature of certain proposed implementation tools. For example, open-ended compliance schedules with no specified date for achievement do not provide adequate assurance that standards will be met and compliance will result within a reasonable time frame.

Thank you for your consideration of our comments. If you have any questions or wish to discuss this issue further, please contact me at the address/number above or Carl Merkle, DNR Policy Analyst, at (541) 429-7235.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Quaenpts", is written over a circular stamp. The signature is written in a cursive style with a long horizontal line extending to the right.

Eric Quaenpts
Director, Department of Natural Resources

EQ: cfm

Cc: Dennis McLerran, Administrator, EPA Region 10
Dan Opalski, Director, Office of Water and Watersheds, EPA Region 10