



Spokane Tribal Natural Resources

P.O. Box 480 • Wellpinit, WA 99040 • (509) 626 - 4400 • fax 258 - 9600

March 23, 2015

Cheryl Niemi
Washington State Department of Ecology
Water Quality Program
P.O. Box 47600, Olympia, WA 98504-7600

**RE: Comments on Washington State's Revisions to its Water Quality Standards
(sent via email to: swqs@ecy.wa.gov)**

Dear Ms. Niemi:

On behalf of the Spokane Tribal Natural Resources Department ("Department"), please accept these comments on the Washington State Department of Ecology's ("Ecology") draft revisions to Washington State's Water Quality Standards, Human Health Criteria, and Implementation Tools ("draft revisions").

As Ecology is aware the Spokane Tribe of Indians ("Tribe") gained treatment in the same manner as a state in 2002 for purposes under the Clean Water Act, and EPA approved its first water quality standards in 2003. EPA approved the Tribe's latest WQS revisions in December of 2013. Those revisions were based on a human health criterion that included a fish consumption rate of 865 grams per day and a cancer risk rate of 10 to the minus 6. The Tribe adopted these revisions with the goal of better protection for its subsistence fishing rights within its waters, and to prepare and protect its waters for the return of anadromous fish. In reviewing Ecology's draft revisions, the Department is seeking to ensure that fish that migrate to and from the Tribe's waters are protected, and that the Tribe's rights are protected from pollution originating in other jurisdictions.

First, the Department with these comments does not support, and the comments should not be construed as supporting any NPDES permits that do not meet the downstream water quality standard requirements of 40 C.F.R. Section 122.4(d). Second, the Department hereby, supports, adopts, and incorporates by reference the complete Northwest Indian Fisheries Commission comments regarding the draft Washington water quality standards revisions, which were prepared on behalf and at the behest of its member tribes, including all materials, references and records, submitted to the Washington Department of Ecology on March 23rd, 2015. With that said, the Department will briefly outline three specific concerns and comments on the draft revisions.

Implementation Tools

In 2009, Washington State passed Substitute Senate Bill 6036. The legislation outlined very specific instances when compliance schedules would be allowed to exceed ten-(10) years. The implementation tools as drafted by Ecology would far exceed what the legislature outlined in 2009. Accordingly, the Department strongly opposes the implementation tools as written in the draft revisions.

Human Health Criteria

As stated above, protection of the Tribe's water quality standards during upstream NPDES permitting decisions is protected by federal regulation, and the Department fully expects that Ecology will closely follow these regulations during future permitting decisions. With that said, migratory fish that Spokane Tribal members consume leave the Tribe's jurisdiction and the Department wants to ensure that they are protected. Accordingly, the Department strongly opposes Washington's changes in the Human Health Criterion that include an increase in the cancer risk rate to 1 in 100,000 and an increased body weight to 80kg. These changes negate Ecology's increase in the fish consumption rate to 175 grams per day. Ecology should keep its current 1 in 1,000,000 cancer risk rate and utilize a body weight of 70kg.

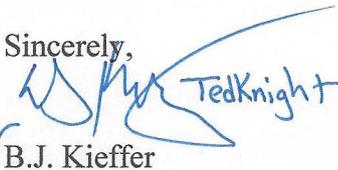
PCBs

Elevated levels of PCBs in fish tissue cause many fish consumption advisories within the State, and are also the cause of many 303d listings. Given this it is unacceptable that Ecology proposes to readopt its current PCB surface water quality criteria of 170pg/L. This standard is currently failing to protect for the designated use of harvest in the state waters and readopting it will not assist in protecting fish and the people that consume those fish. Currently, the Tribe's fish are heavily impacted by pollution that originates in Washington State, and they do not meet the Tribe's standards. Sadly the fish do not even come close to meeting the State's inadequate standards.¹

Conclusion

Overall, Ecology should redraft its revisions to work towards one of the overarching purposes of the Clean Water Act, which is "that the discharge of pollutants into the navigable waters be eliminated."² If you have any questions, feel free to contact me at 509-626-4427.

Sincerely,

 Ted Knight

for B.J. Kieffer
Director
Spokane Tribal Natural Resources Department

¹ Attached Declaration by Brian Crossley.

² See 33 U.S.C. Section 1251(a)(1).

Cc: Rudy Peone, Chairman, Spokane Tribe Business Council
Maia Bellon, Director, Department of Ecology
Brian Crossley, Water and Fish Program Manager, Spokane Tribe of Indians

Honorable Robert S. Lasnik

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

SIERRA CLUB; and CENTER FOR)
ENVIRONMENTAL LAW AND POLICY,)

No. 2: 11-cv-01759-RSL

Plaintiffs,)
and)

DECLARATION OF BRIAN CROSSLEY
IN SUPPORT OF THE SPOKANE TRIBE
OF INDIANS' MOTION FOR
SUMMARY JUDGMENT

SPOKANE TRIBE OF INDIANS,)

Plaintiff-Intervenor,)

v.)

DENNIS MCLERRAN; LISA JACKSON;)
and UNITED STATES)
ENVIRONMENTAL PROTECTION)
AGENCY)

Defendants,)
and)

SPOKANE COUNTY: KAISER)
ALUMINUM WASHINGTON LLC; and)
STATE OF WASHINGTON)
DEPARTMENT OF ECOLOGY,)

Intervenors.)

I, Brian Crossley, declare under the penalty of perjury under the laws of the United States of

America:

DECLARATION OF BRIAN CROSSLEY
IN SUPPORT OF SPOKANE TRIBE'S MOTION
TO FOR SUMMARY JUDGMENT -1
No. C11-1759RSL

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