IN RE: Public Comment Hearing on Proposed Amendments To Water Quality Standards For Surface Waters of The State of Washington - Chapter 173-201A WAC

PUBLIC COMMENT HEARING
TUESDAY, MARCH 3, 2015
Pages 1 to 19

Jody K. Pope, CCR/RPR
STOREY & MILLER COURT REPORTERS
Professional Court Reporters
601 W. Riverside Avenue, Suite 1950
Spokane, Washington 99201
(509) 455-6931 Fax (509) 455-6994
E-mail: scheduling@storeyandmiller.com
LIC. NO. WA 3114

BE IT REMEMBERED that on the 3rd day of March at the hour of 7:30 p.m., the public comment hearing was held before Jody K. Pope, Notary Public and Registered Professional Reporter, CSR No. 3114 (WA) at Center Place Regional Event Center, 2426 North Discovery Place, Spokane Valley, Washington.

MS. BALDWIN: So I'm now going to start the formal hearing, and I will be recording this part to make sure Ecology receives your comments accurately, and I'm going to start by reading some information into the record.

So I'm Karen Baldwin, the hearings officer for tonight's hearing on the Proposed Amendments to the Water Quality Standards for Surface Waters in the State of Washington, Chapter 173-201A WAC.

Let the record show it is 7:32 p.m. on March 3rd, 2015, and this hearing is being held in the Great Room within the Center Place Regional Event Center located at 2426 North Discovery Place, Spokane Valley, Washington.

Legal notice of the rule and this hearing was published in the Washington State Register, number 12-19-055 and 12-19-056, on February 4th, 2015.

Ecology issued a state-wide news release on the rule making and hearing on January 12, 2015.

In addition, Ecology placed information about the comment period and hearing on their website for the rule and in the online public calendar.

Ecology sent out rule announcements via e-mail to the following ListServs or e-mail distribution lists on January 12th: The Water Quality ListServ with 1,205 subscribers; and the Water Quality Partnership with 58 members.

Ecology issued a reminder about the public hearing dates

and times to both ListServs on February 23rd.

It is now the formal comment period for anyone who would like to comment. I will be calling you to testify in the order in which you signed in. When I call your name, please come up to the microphone and state and spell your first and last name, the company or organization you represent, if any, and your address. So I'm going to apologize in advance if I mispronounce your name. Please feel free to correct me.

Remember to limit comments to five minutes, and, audience, no extra noise. When you have 30 seconds left, Mr. Thielen will let you know.

MR. THIELEN: I have my handy Ikea day timer.

MS. BALDWIN: And when your time is up, we will call the next person up to testify. So we're going to begin with Ken Windram, followed by Debbie Stempf.

MR. WINDRAM: I'm Ken Windram, 4930 North Pasadena Lane, Spokane, Washington. First, I want to talk about source control. Many of the chemicals on the lists are not created by people sitting in this room. I ask that the state work diligently to increase the control of toxins because controlling the toxins is by far the simplest and cheapest way to meet water quality standards. And this includes putting pressure on the EPA to amend toxics to include all these substances down to a level approaching our water

quality standards.

Non-point source control, the state needs to have a definite plan for which we can enforce storm water non-point source control because that's clearly identified as one of the major sources for these toxins. Intake credit, if a municipality has a drinking water system that takes water out of a river, uses that water and then treats it and puts it back in the same body of water, I understand that's how the intake credit rules work.

However, there are communities where source water is not the discharge water, and the rules need to be expanded so that if you have a source water that is not your discharge water, that stuff that's in that source water should not be -- you do not have to clean the source water up to put it into the discharge water.

And last but not least, I am in support of the one and one hundred thousand rule that the Water Quality Standard is proposing. Thank you.

MS. BALDWIN: Thank you. Ken, I'm sorry, can you come up and just spell your name.

MR. WINDRAM: Oh, sorry, K-e-n, W-i-n-d-r-a-m.

MS. BALDWIN: Thank you. Debbie Stempf, followed by Jerry White.

MS. STEMPF: Hi, Debbie Stempf, D-e-b-b-i-e, Stempf, S-t-e-m-p-f. My address is 4111 East Prairie Lane Court,

Spokane, 99223, and I am a Washington citizen and a U.S. citizen. The bigger question is why we're in this position to begin with, and how could we allow our waters to reach this point. But since that is where we are at, then I propose that this generation leave our waters cleaner than we found them, and the next generation leave them significantly cleaner yet.

Clean water is a basic human right. Fresh water is a finite resource. Let's treat this issue and our water with the importance and resources it and we deserve. Yes, let's adopt this proposed criteria as a first step.

MS. BALDWIN: Thank you. Jerry White, followed by Mike Peterson.

MR. WHITE: Hi, my name is Jerry White, here in the capacity of the Spokane Riverkeeper, Spokane resident. That's J-e-r-r-y, W-h-i-t-e. When the Clean Water Act was passed in the 1970's, the vision was to obtain fishable waters by the 1980's, that is, clean fish to live in the water to catch and to eat. Unfortunately, we're over 30 years behind those goals of the 1970's. Today, we still struggle with attaining the use of fishable waters.

There are numerous fish consumption advisors advising that virtually all of Washington State is well behind. Those advisories have pointed out that we have toxics inside the food webs that are idly accumulating around our

fisheries to include, PCBs, PPDEs, metal, mercury, among others. A fisherman catching in the Lower Spokane is always looking over one's shoulder at the advisories in order to figure out how much fish they should eat.

In that case, it's two a week, and no other fish for that week should be eaten. Sadly, the burden of cancer risk every time -- I'm sorry, the public is shouldering the burden of cancer risk every time they want to use their waters, and sadly, we are living in an age where everyone knows someone who has been ill or has died from cancer.

So it's within that context that the proposed rules for Washington State I feel do not adequately protect Washington citizens. The proposed Water Quality Standards do not go far enough. We need to adopt standards if we are ever to achieve fishable waters to reduce the risk to the public and the burden that they bear when eating the fish.

I do feel that the proposed consumption rate is a step in the right direction. I thank Ecology for that. 6.5 grams a day is not realistic. 175 grams is much more realistic, and it's an excellent start to achieving success. However, the risk level of one case of cancer to 100,000 Washington citizens who eat fish is a failure. I'm disappointed that Ecology settled on this number. I feel it represents a compromise and it threatens those who eat local fish from local water. It puts a burden on using that water

on those who are very young, who are pregnant, poor, or communities that might be catching and eating local fish, the Walleye Bass Club, sportsman, and the like.

Additionally, with the extension of variances and the extended compliance schedules, potentially will be able to stall forward progress on chemical pollution of individual point sources. This proposed rule gives us little hope of the intent of the clean water goals as they were for the public in the 1970s. I'm not sure if it makes sense for Washington State to step back and let EPA promulgate a rule that protects the Washington public, I'm not sure about that, but I do remain critical that this rule represents -- that this rule actually represents progress. I don't think that it charts a course for collective health or for the progress we need to see in meeting the uses of fishable rivers that we really should have met years ago.

Thank you very much for the opportunity to testify. And I will say we're out in the community talking to people and collecting signatures as well on the rules. So we're out trying to do our part. Thank you very much.

MS. BALDWIN: Thank you. Mike Peterson, followed by Andrew Woods.

MR. PETERSEN: I'm Mike Peterson, M-i-k-e P-e-t-e-r-s-e-n. I'm the director of the Lands Council, and I do appreciate the opportunity to speak tonight at this

hearing. This is a really important issue to the Lands Council. I have a couple of points. For nearly ten years, we've been out, with the help of the Department of Ecology Public Participation Grant, talking to people on the river, people who eat fish, telling them about some of the toxins in the river, and so it's really interesting, low income people eat a lot of fish out of this river. They don't catch and release. They survive on it, almost subsistence like.

We all know that Washington State has many tribes who also eat a large amount of fish in their diet and would like to eat more actually if there was salmon everywhere, as they historically did eat. So I'm appreciative that Ecology has brought up the level of fish consumption to a more reasonable rate. The 157 or so grams is kind of a small piece of a meal that one might eat at a restaurant, and I know people -- low income people who have to rely on it eat a lot more fish than that, so I'm appreciative of that.

I am very concerned about lowering the -- or basically raising the cancer risk rate by going from one in a million to one and a hundred thousand. I did look through the list of states that have lowered those risks and we have states like Arkansas, Alaska, you know, some of our, let's say, less progressive states have made those changes, and so I don't think Washington State should follow that pattern.

Ironically, it would put us in a pattern of allowing higher cancer risks than the State of Idaho and Montana, our neighbors, and Oregon, certainly.

So I just hope that we take a second look at that cancer risk rate. I do appreciate that Ecology has undertaken a very long and arduous, you know, battle against all these chemicals. We personally worry a lot about PCBs, and I'm a member of the Spokane River Regional Toxics Task Force. We're kind of on the hunt for PCBs, and I think combined with the variance that you're offering here and the compliance schedule extension, taking out these very challenging chemicals does take extra effort, but I think changing the cancer risk rate and making it easier for somebody to pollute is not probably a good step. Thank you very much.

MS. BALDWIN: Thank you. Andrew Woods, followed by Rick Eichstaedt.

MR. WOODS: Hello, my name is Andrew Woods, A-n-d-r-e-w, W-o-o-d-s. I'm a Gonzaga University School of Law student here in my final semester. I work primarily in environmental law. I do a lot of work on the Clean Water Act, as well as land use and zoning issues. I have a few points about the proposed rule. The first has already been iterated by our Lands Council director and our Riverkeeper, and that's realistic fish consumption rates. While I do

1 commend Ecology for proposing 175 grams per day, that's a
2 much more realistic rate. The risk level changes from ten
3 to the negative six, to ten to the negative five,
4 essentially raising it from 6.5 grams a day to 17.5 grams a
5 day if the math works out.
6 It seems to be sort of cooking of the books or speaking
7 rhetoric, and I don't think the citizens of Washington,
8 especially those tribal populations as we identified earlier
9 in the question and answer period for the record that tribes
10 are in no way in support of this risk level that's being
11 changed, neither is the Federal EPA, as we identified
12 earlier in our conversation.
13 We need a realistic fish consumption rate for the fish
14 in Washington. If we look at a piece of 6.5 grams of fish,
15 it's just ridiculous to think anybody would even eat that
16 miniscule amount for a meal. I'm not sure if it's political
17 pressure that are turning it from ten to the negative six to
18 ten to the negative five. I want to say, I moved here from
19 the Midwest, from Ohio, to come to a progressive state like
20 Washington, that I thought environmental protection and
21 statutory regulations had more teeth than where I came from.
22 I'm very disappointed in that change in the risk level.
23 And even if it was kept at ten to the negative six, I
24 still think 175 grams per day is a bit naive and a bit low.
25 If you look at, like I said, subsistence fisheries, tribal

populations, just anybody that has the luxury to eat fish in the rivers in the bodies of water here in Washington, something like 300 grams per day is much more realistic for the average fish eater a day.

Secondly, I take issue with extended deadlines for compliance past ten years. If this is a Human Health Criteria, we should have human health above anything else. If entities can't get into compliance after ten years, that's the name of the regulated state, that's the name of the game. This is Human Health Criteria, not appeasing industry criteria.

My third thing is that PCBs and lead and mercury are far below the current standards of Oregon, and a lot of other states, and I would like to see those thresholds, those concentrations be even lowered further if possible. Thank you.

MS. BALDWIN: Thank you. So Rick Eichstaedt, slower than he did.

MR. EICHSTAEDT: My name is Rick Eichstaedt, R-i-c-k, Eichstaedt, I'm the Executive Director of the Spokane Center for Justice. First, I would like to welcome you folks from Olympia to a watershed that has -- actually has a fish consumption rate of 860 grams of fish per day at ten to the minus six, and I like that the Spokane Riverkeeper, like Mike Petersen from the Lands Council, and many others are

1 participating in regulatory actions and cleanup efforts to
2 deal with PCBs. And I can assure you that living in a
3 watershed with 860 grams of fish per day as a consumption
4 rate at ten to the minus six has not closed down business
5 and has not stalled our economy. I think Spokane, as many
6 of us who live here would agree, we are a thriving
7 community.
8 First off, I would like to recognize the long efforts
9 that Ecology has put forth in doing this, and I recognize
10 the extreme politics and difficulty in doing this. And
11 despite that politics and pressure, you did something right.
12 The proposal for 175 grams of fish per day is right on, and
13 I think that reflects the recommendations that have been
14 adopted by tribes and others for realistic fish consumption.
15 However, I do take note or offense with two of the
16 proposals, specifically, the reduction of the cancer risk to
17 ten to the minus fifth, and some of the regulatory off
18 ramps, which essentially negate for an undisclosed amount of
19 time the benefit of this rule. So first, it was brought up
20 during the question and answer, you know, who supports this,
21 and I think there's no tribe that supports this. And in
22 fact, the National Conference of American Indians in 2013
23 passed a resolution calling for a cancer risk of ten to the
24 minus six.
25 EPA has repeatedly indicated that they think Ecology

1 should adopt or retain the current cancer risk. In fact, in
2 July of the last year, they articulated, and instead of me
3 coming up with some reasons, I'll articulate what they said
4 first and this is in a letter from Dennis McLerran. First,
5 Ecology stated a desire to protect higher fish consumers in
6 Washington. I'm not clear why Ecology Human Health Criteria
7 to protect higher fish consumers, it is necessary or
8 appropriate for Washington to reduce the level of cancer
9 risk for the entire state.
10 Second, certain low income minority and other fish
11 consuming groups could provide -- this could provide less
12 protection than they have now, and this presents an
13 environmental justice issue. And third, as articulated by
14 Dennis McLerran, Regional Administrator, he states, in order
15 to protect downstream waters consistent with EPA
16 regulations, he calls for consistency on EPA Region 10's
17 states and tribes, particularly when dealing with similar
18 pollutants and environmental health risks.
19 And I think it was brought up by, I believe Mr. Woods,
20 that raising the consumption, but lowering the risk, has
21 very little effect, and in fact, Ecology's own benefit -- or
22 preliminary cost benefit in these burdensome alternative
23 analysis says this isn't going to change anything. That
24 report, at Section 5.2.5 says, after reviewing, filtering,
25 and assessing real cases of existing affluent data, we

1 conclude that while it is theoretically possible for
2 existing facilities to be impacted by a changing criteria
3 value, based on a reasonable potential determination and
4 resulting from the proposed rule amendments, no such
5 existing facility will be impacted based on the analysis we
6 conducted. In other words, this isn't going to change
7 anything. Boeing and others may not be concerned because
8 these rules will not change a thing.
9 Second, I'm concerned about, and I will use the term,
10 and I know Ecology staff does not like the off-ramps. We
11 heard earlier in the question and answer that we conceivably
12 could exceed unlimited variances for undefined periods of
13 time, that some of these other off-ramps not only do they
14 apply for toxins, but they apply for all pollutants.
15 Now, as a member of Spokane Community I supported
16 creative approaches to dealing with toxins. In fact, I'm
17 one of the authors of the Spokane River Toxics Task Force.
18 The Spokane Riverkeeper, the Spokane County and the city got
19 together and we actually had to force Ecology and EPA to
20 support that creative approach to deal with toxics. But
21 it's limited. It deals with toxics, and it specifies
22 actions that need to occur.
23 Here, this applies, these off-ramps apply to all
24 pollutants, and in fact, we had urged Ed Sturdivent, former
25 Ecology director, to limit that application of these tools

to just the change that resulted in requirements because of toxics.

MR. THIELEN: You have about 30 seconds left.

MR. EICHSTAEDT: Okay. I just want to close by saying, as Jerry said, we were supposed to have fishable, swimmable water by 1983. EPA is taking action. We think Ecology should take this opportunity to do it right, and if they're not going to do it right, just let EPA do it. Thank you.

MS. BALDWIN: Thank you. Does anybody else wish to testify at this point? Okay. If you would like to send in comments, they must be received by midnight on Monday, March 23rd, 2015. You may submit comments by mail to Cheryl Niemi, C-h-e-r-y-l, N-i-e-m-i, at the Washington State Department of Ecology, Water Quality Program, P.O Box, 47600, Olympia, Washington, 98504-7600.

Comments can also be e-mailed to swqs@ecy.wa.gov or faxed to (360) 407-6426. These addresses are also available on the focus sheet in the back of the room on Page 2, which looks like this. If you haven't seen it, please get that.

So we have additional open houses with public hearings that are going to be held tomorrow, March 4th, at 6:00 p.m. in Yakima at the Yakima Convention Center located at 10 North 8th Street in Yakima, Washington 98901. On March 12th, 2015, at 1:30 p.m. and again at six o'clock p.m. in Olympia, at Ecology's headquarters building. This is

located at 300 Desmond Drive, Lacey, Washington 98503-1274.

So the March 12th presentations and hearings are also available by webinar. Ecology will accept comments in-person and through the webinar via the phone during the hearings. So please go to the website and register or see Page 2 of this focus sheet for more information on how you can register for those webinars.

All testimony received at this hearing, as well as e-mails, hard copy comments or faxes received by midnight on Monday, March 23rd, will be part of the official record for the proposed standards. Ecology staff will respond to comments in a document called a Concise Explanatory Statement or CES. The CES will be available after the rule is adopted on Ecology's website at www.ecy.wa.gov/programs/wq/ruledev/wac173201A/1203docs.html. Ecology will send a notice about the availability of the CES in a news release and to the ListServs.

The next step is to review the comments and make a determination whether to adopt the rule. Ecology Director, Maia Bellon, will consider the documentation and staff recommendations and will make a decision about adopting the rule. Ecology expects to adopt the rule no earlier than July 1st of this year.

If we can be of further help to you, please ask. Thank you for coming on behalf of the Department of Ecology, and

let the record show the hearing was adjourned at 7:58 p.m.
Thank you, everybody.

(The hearing was adjourned at 7:58 p.m.)

STATE OF WASHINGTON)

)ss. Reporter's Certificate

County of Spokane)

I, Jody K. Pope, a certified court reporter and a Notary Public in and for the State of Washington;

DO HEREBY CERTIFY:

That the foregoing is a true and correct transcription of my shorthand notes as taken upon the public comment hearing, on the date and at the time and place as shown on page one hereto;

I further certify that I am not related by blood or marriage to any of the parties to said suit, nor am I an employee of any of the parties or of their attorneys or agents, nor am I interested in any way, financially or otherwise, in the outcome of said hearing.

Dated at Spokane, WA this 6th day of March, 2015.

_____

JODY K. POPE