



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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October 26, 2012

Mr. Merle Jefferson, Sr., Executive Director  
Lummi Natural Resources Department  
2616 Kwina Road  
Bellingham, WA 98226-9298

Dear Mr. Jefferson:

Thank you for your letter of October 8 regarding participation at the Key Delegates Table in the Policy Forum we are establishing to help guide and inform our work on updating our water quality standards. In our current rulemaking, we will be developing new human health-based Water Quality Standards for toxics, which will include updating assumptions about how much fish Washingtonians eat. I understand the distinction between a stakeholder process and government-to-government consultation, and appreciate your sharing the Lummi Nation's policy regarding consultation. I respect your decision to not participate on the core group, which will include representatives from local governments, ports and private business.

As you may know, there is much more to updating our Water Quality Standards than just adopting a fish consumption rate. Since we have been operating under EPA's National Toxic Rule, the task before us is to adopt a new section in our standards addressing human health criteria. This will include a fish consumption rate and other important public policy issues, such as which cancerous and non-cancerous chemicals the standards should address, decisions about exposure assumptions and the appropriate levels of public risk that are acceptable within the standards framework. The intent of the Policy Forum is to have an informed discussion and a mutual sharing of perspectives on these important public policy issues as we chart a path to genuine toxics reduction that continues to protect our fish consuming communities, while providing realistic compliance pathways for dischargers.

I am disappointed that you will not be part of the public dialogue on these complex and important policy decisions at this time. I hope that your staff will, nonetheless, be able to follow the process and discussion and offer insight, perspectives and advice in a manner that is consistent with your policies and interests, which will be helpful as we take on these tough issues.

Thank you for providing the information regarding the Lummi Nation Seafood Consumption Study and for including our staff in its review. Although due to timing, we were not able to include a review of this study in our Technical Support Document, it will be available to decision makers as we make site specific cleanup decisions and develop human health criteria.



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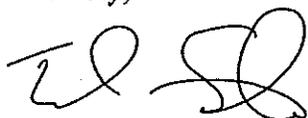
I understand you are concerned about any delay in our efforts to address updating protections for fish consumers in our sediment and water quality standards. We have, in fact, *accelerated* our efforts to update our Water Quality Standards and point to the following actions:

- In our Sediment Management Standards, we have proposed the *highest standard* of protection for fish consumers – reasonable maximum exposure. In response to requests from tribes, ports and others, we have extended the public comment period but still hope to have the rule adopted by the end of this year.
- We have assembled the science on national and regional fish consumption patterns to inform these decisions on a site specific basis and will have the technical support document finalized next month. This document, along with any new relevant studies that may become available, will also inform our work on human health criteria.
- I have delayed work on implementation and compliance tools for dischargers, as some have urged, to have this rule move concurrently with updating our Water Quality Standards.
- Perhaps most significantly, I have moved up our work on updating the Water Quality Standards human health criteria ahead of schedule. In September, Ecology began formal rulemaking activities to adopt new human health-based Water Quality Standards for toxics. The new standards will include a new fish consumption rate based on relevant regional data. This rule effort was identified in our triennial review process to be taken on next year, but we are moving that forward now.

I believe it is our responsibility to ensure that tribal communities are able to follow their traditions and culture, which includes a greater reliance on local fish and shellfish than that of the general population. Tribes reserved that right when they signed treaties ceding their lands to the United States. While treaties did not anticipate toxic contamination, it is our responsibility to ensure that fish are safe to eat at those higher levels of consumption. We are trying to address toxic threats to all of our communities in a meaningful and comprehensive way. Updating our standards is just one tool to get there.

As we proceed with this important standards update, we stand ready to engage in government-to-government consultation with the Lummi Nation at whatever point in this process you feel is appropriate. Please let me know if you feel that government-to-government consultation is needed. In addition, I hope your staff will follow our process on our website and through the open policy forums, and feel free to contact my staff at any time with questions or suggestions.

Sincerely,



Ted Sturdevant  
Director

cc: Dennis McLerran, EPA Region 10 Administrator  
Kelly Susewind, Ecology Water Quality Program Manager  
Jim Pendowski, Ecology Toxics Cleanup Program Manger