UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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OFFICE OF THE
REGIONAL
ADMINISTRATOR

JUN 21 2013

Ms. Maia Bellon, Director
Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600

Dear Director Bellon:

The U.S. Environmental Protection Agency appreciates your continued efforts to adopt human health water quality criteria to better ensure health protection for Washington residents. The EPA's understanding is that the Department of Ecology (Ecology) is on pace to propose a draft rule this winter. However, most recently, a number of stakeholders in the process have asked for our technical views on the budget proviso in Washington State Senate Bill 5034. The proviso, if enacted, would have significant impacts on Ecology's process and progress. Therefore, I would like to reiterate our perspectives on several technical issues that are relevant to your work.

As you are aware, the EPA has been asked on several occasions to share its perspectives on the water quality criteria revisions underway in Washington and Idaho and how we view these efforts in relation to Oregon's revised human health criteria that were derived using a fish consumption rate of 175 grams per day, which the EPA approved in 2011. There has been much discussion in the current state processes about appropriate fish consumption rates, which are used to derive the human health criteria. The EPA also has been asked by the tribes and environmental groups, in particular, to intervene in the Washington and Idaho rulemaking processes and to exercise available authorities under the Clean Water Act.

When the EPA reviews state and tribal water quality standards for approval or disapproval, the EPA must ensure that criteria are based on a sound scientific rationale consistent with 40 CFR § 131.11(a). The EPA believes there are scientifically sound regional and local data available in Washington that are sufficient for Ecology to move forward in choosing a protective and accurate fish consumption rate at this time. These data were thoroughly analyzed in Ecology's *Fish Consumption Rates Technical Support Document*, which was recently finalized. The best available science includes evidence of consumption rates well above 6.5 grams per day among high fish consumers and shows that the human health criteria currently in effect for Clean Water Act purposes in Washington are not sufficiently protective. In Oregon's case, the EPA disapproved human health criteria similar to the currently applicable human health criteria for Washington under the National Toxics Rule (NTR). Oregon subsequently submitted, and the EPA approved, new human health criteria derived using a fish consumption rate of 175 grams per day, supported by sound scientific data.

As noted previously, choosing a fish consumption rate for deriving human health water quality criteria is a current discussion topic in both Washington and Idaho. As you are aware, the EPA disapproved Idaho's human health criteria derived using a fish consumption rate of 17.5 grams per day because Idaho did not consider the available information relevant to fish consumption when calculating their human health criteria. The EPA believes that there are sufficient regional and local fish consumption data available to revise human health criteria in both Washington and Idaho, although the EPA has acknowledged that there are less state-specific data in Idaho on higher consumers. In Washington, in

contrast with Idaho, the EPA believes that there are a number of scientifically sound data results specific to surveys conducted in the State for several population groups, including tribes, Asian Pacific Islanders, and recreational anglers.

We recognize the immense amount of work that Ecology has done to host a number of public meetings as part of the state rulemaking process, and we have appreciated participating in those discussions. We also acknowledge the challenges still to come in making final decisions about the rule revisions, including implementation tools. The EPA is committed to working with Washington as they move forward on their rulemaking, and to helping ensure the rulemaking proceeds in a timely manner, with sound scientific data supporting decision-making. The EPA's commitment to support Washington State's process is consistent with the EPA's strong preference to support states in their development of water quality standards that are protective of designated uses rather than to develop standards at the national level.

However, should Washington's process be unnecessarily delayed, the EPA has the authority to amend the NTR human health criteria for Washington, which the EPA originally promulgated in 1992. Pursuant to Clean Water Act Section 303(c)(4)(B) and 40 CFR § 131.22(b), the EPA promulgated the NTR for states not complying with Section 303(c)(2)(B) of the Clean Water Act, which states, "…State[s] shall adopt criteria for all toxic pollutants listed pursuant to section 307(a)(l) of this Act for which criteria have been published under section 304(a), the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses." As previously noted, since 1992, several national, regional, and local surveys have been conducted that provide scientifically sound information that fish consumption levels are considerably higher than 6.5 grams per day in Washington. In discussing this federal authority, the EPA has noted that a federal rulemaking would likely focus on human health criteria and not include the implementation tools currently being evaluated in the state rulemaking process.

I look forward to our continued work together on this very important issue for the health and protection of all Washington citizens. If you would like to discuss further the topics I've addressed, please contact me directly or Dan Opalski, our Director for the Office of Water and Watersheds, at (206) 553-1855.

Sincerely,

Dennis J. McLerran
Regional Administrator

cc: The Honorable Billy Frank, Jr., Chairman
Northwest Indian Fisheries Commission

The Honorable Brian Cladoosby, Tribal Chairman
Swinomish Tribe