UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
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Seattle, WA 98101-3140

OFFICE OF THE
REGIONAL
ADMINISTRATOR

APR 08 2014

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

Dear Director Bellon:

I am writing in regards to your February 14, 2014 letter to Michael Grayum, Executive Director of the Northwest Indian Fisheries Commission and more recent conversations we have had with you and your staff. The U.S. Environmental Protection Agency was strongly encouraged by the Department of Ecology's timeline to adopt human health criteria with a draft rule by the end of March 2014 and a final rule submitted to the EPA by December 31, 2014. Although the EPA was disappointed to hear that Ecology will no longer be able to meet the commitment to issue a draft rule in March, we understand that Ecology remains committed to adopting a final rule by the end of 2014.

The EPA supports Ecology's use of the scientifically sound regional and local fish consumption data available in Washington as it develops its human health criteria. As I have previously stated, the best available science includes evidence of fish consumption rates well above 6.5 grams per day among high fish consumers in Washington, which raises concerns that the human health criteria currently in effect for Clean Water Act purposes in Washington are not sufficiently protective. In addition, as we have also discussed, another important element of a final rule is choosing a cancer risk level that provides risk protection for all Washington citizens, including communities that eat higher amounts of fish. The EPA remains committed to supporting Ecology as it moves forward with a rulemaking based on sound scientific data. This will help facilitate the EPA's review of Ecology's new or revised water quality standards, which requires EPA to ensure that criteria are protective of applicable designated uses and based on a sound scientific rationale, consistent with 40 CFR § 131.11(a).

If Ecology does not follow through with its stated timeframe for final rule adoption, the EPA intends to take the steps necessary to allow for a proposal of federally revised human health criteria for Washington, via amendment of the National Toxics Rule human health criteria for Washington, by May 31, 2015. For the sake of clarity, I note that this letter does not constitute, and is not intended as, an Administrator determination under CWA § 303(c)(4)(B).

The EPA is very appreciative of the challenging work that Ecology has undertaken thus far to adopt human health water quality criteria. I look forward to continuing our partnership to support state adoption of human health criteria to better ensure health protection for all Washington citizens. If you would like to discuss these topics further, 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: Michael Grayum, Executive Director
Northwest Indian Fisheries Commission

Brian Cladoosby, Tribal Chairman
Swinomish Tribe